

P

PRI

(original)
PRINCIPLES OF GOVERNMENT

DEDUCED FROM

R E A S O N,

SUPPORTED BY

ENGLISH EXPERIENCE,

AND

OPPOSED TO

FRENCH ERRORS.

BY THE REV. R. NARES, *A. M.*

CHAPLAIN TO HIS ROYAL HIGHNESS THE DUKE OF YORK,

ANAPXIAZ AE MEIZON OYK ESTI KAKON.

SOPHOCLES.

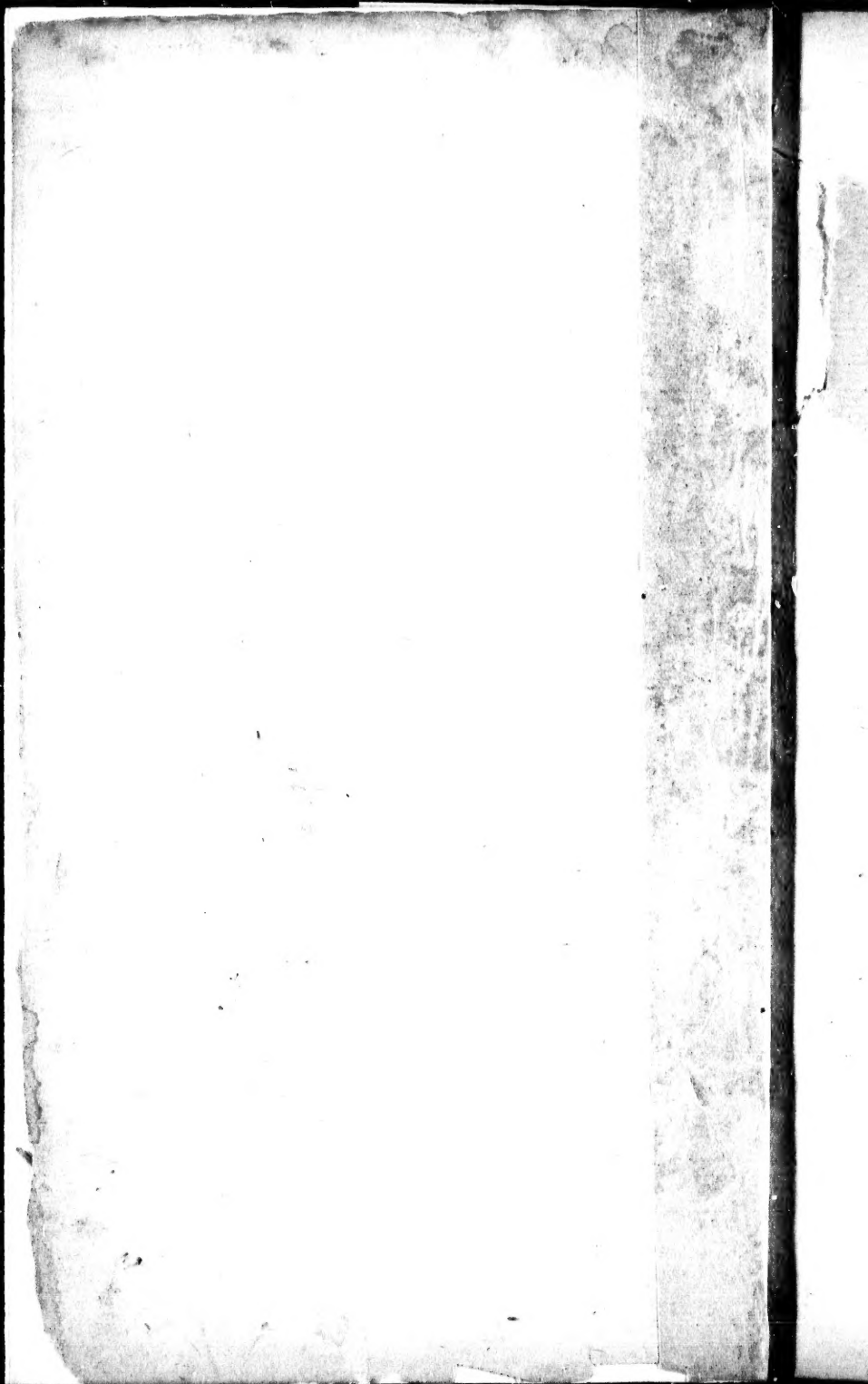
THERE IS NO GREATER ILL THAN ANARCHY.

L O N D O N.

PRINTED FOR JOHN STOCKDALE, OPPOSITE BURLINGTON
HOUSE, PICCADILLY.

1792.

[Price Two Shillings and Sixpence.]



TO HIS

KING AND COUNTRY,

THE BEST KING

AND THE HAPPIEST COUNTRY

AT PRESENT KNOWN,

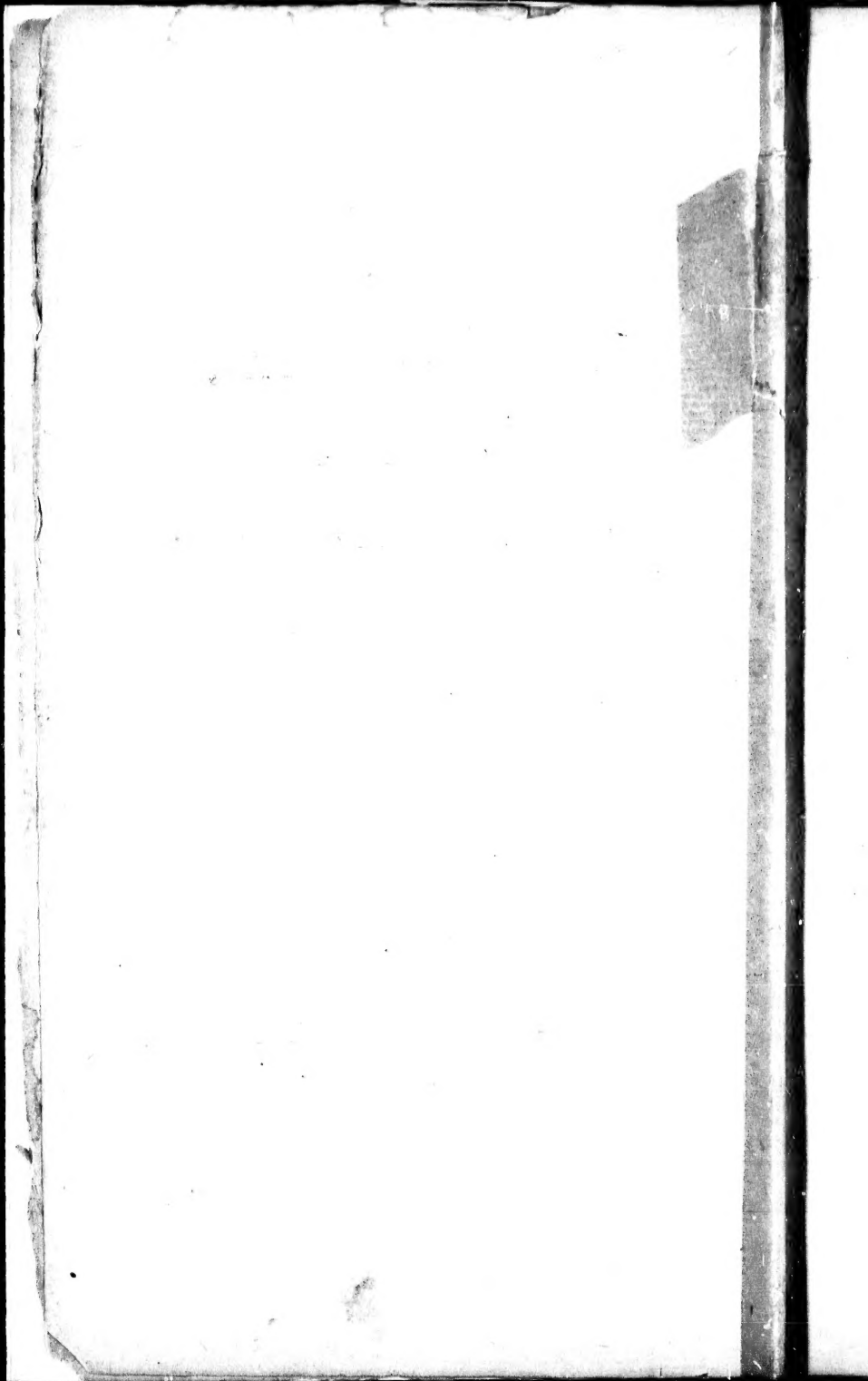
THESE SHEETS, INTENDED FOR THE

SERVICE OF BOTH,

ARE, WITH ALL HUMILITY,

INSCRIBED BY

THE AUTHOR.



P R E F A C E.

A Preface to a Pamphlet may appear, perhaps, like a vestibule to a cottage; a great formality to introduce a trifle. There seems, however, to be reason for it in the present case. The ensuing sheets are confined to general topics; this place may be allotted to more particular considerations,

Most of those in this country, who either read or converse, begin at length to be fatigued with the disputes between the English and French politicians. The object of this Essay is, to give a newer and more useful form to the most momentous questions that arise from those disputes: to convey what is

conceived to be the truth, in a kind of elementary method. The French Revolution and its admirers are, therefore, for the reader's comfort, banished to the preface.

On the subject of Government, the French are new and unexperienced theorizers. It is not very long that many have been bold enough among them to discuss the point with any freedom. On a sudden they are become, as some among them have affected to express it, *illuminated*: they stand, as they imagine, on an eminence above mankind, and think they have a wider prospect than the human eye has ever seen before. This, however, is no proof of real knowledge; it resembles rather the presumptuous boast of ignorance. The boor, who for the first time climbs a mountain, is surprised to see the world so large, and conceives his knowledge of it to be a wonderful and singular acquirement, yet comprehends as little of its real compass

compass and extent, as when he dwelt within the bosom of his valley.

Such sudden illumination is not within the course of nature. The French have gone, indeed, from one extreme to another, they have burst, after long servility, the chains of despotism, and now all is liberty, equality, and rights of man: but this is also the common progress of ignorance, long ago noted by Satyrists.* Men escaped from chains have always raved as they do of liberty and equality, in proportion to the galling of their former bonds: but this is not wisdom, it is only extravagance. Because one extreme is evidently wrong, the other, they imagine, must be right; but truth, as well as virtue, resides generally in an intermediate point between such utter opposites. We, too, have had our phrensics of this kind, but we have long

* *Dum vitant stulti vitia in contraria currunt.*
Hor. sat. i. ii. 24.

From one extreme fools rush into another.

been cured. These *new discoveries* of the French were then made here, and had been made before, whenever men were in the humour to throw off all order and restraint. Jack Cade had as correct a notion of the rights of man as the fishwomen of Paris, and expressed it very similarly.*

The progress of human wisdom in discoveries is naturally very slow; and a little sound experience, properly improved, is better than whole waggon-loads of theory. The constitution of this country is the work of sound, deliberate sense, proceeding coolly on experience; it has been constructed gradually from a long succession of experiments, and having thus acquired a form which has obtained the approbation of the wisest men,

* “*Cade*. Thou dost ride on a foot-cloth, dost thou not?—*Say*. What of that?—*Cade*. Marry, thou ought’st not to let thy horse wear a cloak, when honest men than thou go in their hose and doubtless.” *Shakesp. Hen. vi. act. 5. sc. 7.* and for such wise reasons the *Aristocrat*, Lord Say, was put to death.

and,

and, what is infinitely more decisive, having been found productive of prosperity and public happiness, has become renowned and glorious, so far as it is understood, throughout the civilized world. We presume not to assert it is perfect, for it would not then be human ; but it is excellent ; and in this respect peculiarly so, that it has within it the means of going on for ever towards perfection, without convulsion, violence, or danger. To be always open to improvement, by regular and legal process, is one of its most striking qualities.

The British Constitution is, however, in its present state so good, that to study its construction, and to comment on the modes by which it is enabled to produce its excellent effects, is perhaps the very best of all political exercises : and if any man may reasonably hope to make discoveries, and to place this branch of human knowledge within wider limits, it must be an Englishman, who has well considered

sidered and comprehended the rights to which he has been born, and the means by which they are secured.

On this ground, rather than with any vain assumption of superior wisdom, has the author of these sheets presumed to lay down principles, which, being so concise, upon a subject so extensive and so intricate, must be considered as a sketch designed for ready use, and not as a complete or finished system. If the principles are true, which it is hoped they will be found; every man may build securely on them for himself. This, at least, they seem to have peculiar, that they accord at once with the doctrines of Religion, and the claims of freedom; and that they lead to peace, good order, and security. Of this I am convinced, that nothing solid can be formed in morality or politics, that has not true Religion for its basis. By the will of God we are placed here, and by that, if we
are

are either wise or good, we must be guided. Nor can those systems be accounted right, or friendly to the happiness of men, which lead to violence, injustice, and confusion, and cannot be established, but on the ruins of Religion and morality. The decisions of reason will here be found to accord with those of revelation, so that they who are infatuated enough to object to either, may rest upon the other, and unite in one conclusion.

The main point to which these general reflections tend is to show, that all the real rights of men and citizens are secured to us by that form of Government under which we live ; and that all other pretended rights are not only chimerical, but pernicious to Society.

Revolutions have been lately talked of as if they were in themselves desirable, instead of being, as they should be, the rare and ultimate result of dire necessity. Common sense can easily discern, that this is like the error of

a man who having seen a good effect produced by violent medicine, should desire to live upon it. It is said, that once a man was cured of an inveterate abscess, by the thrust of a small sword through his body; but surgery will surely never use this method in the common course of practice,

Efforts have been lately made, with no small diligence, to persuade the people of this country, that even here another Revolution is required; and to alienate their minds from the established constitution. That these endeavours have met with small, or no success, is owing to that sound good sense which makes our people know when they are well. They who hold up to them the example of the French, wish only to mislead them. At the delivery of France from slavery, the English honestly and generously rejoice; but having no chains of their own to throw aside, what should they imitate? If they do not on the whole rejoice, it is because they see their
neigh-

neighbours blindly rushing from one great evil to a worse ; from an oppressive Government with many faults, to one which, wanting the first principles of order, must be little besides faults. The horrors that have taken place in every part of France, since the destruction of the old imperfect constitution, are in this country very little known ; and a work might easily be formed from most authentic materials, containing a detail too shocking to humanity to be perused with patience. The murders of a few men at Paris and Versailles are nothing, to the scenes that have been acted in the country.

There is reason to suppose that the men who recommend an imitation of the French, desire to introduce that anarchy, and violation of all rights of property which have been there exhibited. We seem to have even a direct proof, that hostility and hatred to our whole constitution actuates them more than any other principle. The proof is this : a

man unconnected with this country, except by the injuries he has done to it, and the protection he at present, though unworthily, derives from the equality and mildness of its Laws, put out a paltry pamphlet; in which, in a rude and ungrammatical style, though not devoid, in parts, of strength, and a certain coarse and popular style of declamation, he ventured to deliver a libel upon every part of the English Government. He attacked, however unskilfully, the principles of our most important Laws, the succession to the throne, the act of settlement, the throne itself, the Aristocratic order, and even denied, most impudently and absurdly, that we have a constitution. This pamphlet, however, base as it was, both in origin and execution, spoke out the meaning of the Revolution party, and said what for themselves they had not dared to say. It was extolled, patronized, bought up, reprinted, circulated under forged recommendations, given away; and all this with the hope that

its bold assertions might pass upon the ignorant for truth, and that its virulent abuse might lessen at least in the minds of the people, their habitual affection for their country's Laws and Government. Happily the attempt has proved abortive. But it has had accidentally this good effect, that it has set a mark upon the men who hate and would destroy our constitution. The circulators and extollers of this pamphlet must be of course the enemies of all our rights, as much as he who wrote it. This, therefore, is of use : it has taught us whom to view as disaffected ; it has made it certain, at least, what men we cannot trust. Between the maxims of that pamphlet they admire, and the principles of the British constitution, there cannot possibly be formed a medium of reconciliation ; where the one is loved, the other must be hated. Let such men, therefore, take whatever name they please, they are and have declared themselves the enemies of the British Constitution.

With respect to the general attack of all the principles of order at present so inclined to spread in Europe, it is singular enough that an old poet in this country, less known than he deserves, considered it as a natural consequence to arise from the discovery of printing. Daniel, for he was the writer, assigned indeed a period too immediate for the production of these effects ; but were he now alive, he might perhaps be tempted to imagine that his inspiration had been more than merely poetical. He introduces Nemesis instructing Pandora to sow the seeds of mischief among men, in these terms :

Go therefore thou with all thy stirring train,
Of swelling sciences, the gifts of grief ;
Go loose the links of that soul-binding chain,
Enlarge this unquitting belief :
Call up men's spirits that simpleness maintain,
Enter their hearts, and knowledge make the thief,
To open all the doors to let in light,
That all may all things see, but what is right.

Opinion

Opinion arm against opinion grown ;*

Make new-born contradictions still to rise,
As if Thebes founder, Cadmus, tongues had sown,
Instead of teeth, for greater mutinies.

Bring new defended faith, against faith known ;

Weary the soul with contrarieties ;
Till all Religion become retrograde,
And that fair tire the mask of sin be made.

And better to affect a speedy end,

Let there be found two fatal instruments,†
The one to publish, th' other to defend,

Impious contention and foul discontents.
Make, that instamped characters may send

Abroad to thousands, thousand mens intents ;
And in a moment may dispatch much more
Than could a world of pens perform before.

Whereby all quarrels, titles, secrecies,

May unto all be presently made known ;

Factions prepar'd, parties allur'd to rise,

Sedition under false pretences sown :

Whereby the vulgar may become so wise,

That with a self-presumption overgrown,

They may of deepest mysteries debate,

Controul their betters, censure acts of state.

* Grown opinion, for mature opinion ; as a man grown for
a man of full age.

† Printing and gunpowder.

And then, when this dispersed mischief shall
Have brought confusion in each mysterie,
Call'd up contempt of states in general,
Ripen'd the humour of impiety ;
Then have they th' other engine, wherewithal
They may torment their self-wrought misery,
And scourge each other in so strange a wise,
As time or tyrants never could devise.

Civil Wars of England. b. vi. ft. 35, &c.

With this curious antique picture, which seems only an anticipated representation of France, I shall conclude this introductory address, and leave my readers to consider whether the principles that I have offered in this treatise are not of a better tendency.

C O N-

C O N T E N T S.

	Page
CHAP. I. <i>On Government in general</i>	1
—— II. <i>Of the Rights of Man</i>	12
—— III. <i>Of Liberty</i> - -	25
—— IV. <i>Of Laws</i> - -	31
—— V. <i>Of Legislation</i> - -	39
—— VI. <i>Of Representation</i> - -	47
—— VII. <i>Of the Legislative Body</i>	54
—— VIII. <i>Of the Executive Power</i>	62
—— IX. <i>Of the King</i> - -	81
—— X. <i>Of the Balance of Powers</i>	100
—— XI. <i>On the Creation of an Aristocratic Order</i> - - -	112
—— XII. <i>Farther Considerations on an Order of Nobility</i> - - -	122
—— XII. <i>On a Religious Establishment</i>	128
—— XIV. <i>On the Right of Resistance</i>	137

ERRATUM.

Page 17, l. 3. "*For in truth,*" &c. separate from the quotation, to which it does not belong.

PRINCIPLES
OF
GOVERNMENT, &c.

CHAP. I.

On Government in general.

THE source of all good government is *wisdom*: the universe is therefore governed perfectly, because the Wisdom that directs it is infinite. *Goodness*, properly, is included in wisdom, because all evil is only deviation from that line of rectitude which perfect Wisdom discerns. In human nature, however, where wisdom is imperfect, *goodness* becomes

B separable

separable from it ; and the two qualities are found united in many different proportions. In politics, therefore, the subject of which is man, it is necessary that wisdom and goodness should be considered separately.

Wisdom and Goodness are universally the principles and causes of Order and Preservation ; Folly and Wickedness, of Confusion and Destruction. It is therefore right universally, that the former should govern, and that the latter should be placed under controul and government.

From this plain truth it follows also universally, that, of all forms and systems of Government, that must be the best, which most successfully calls forth the aid of Wisdom and of Goodness, and most effectually restrains the public operation of Folly and of Wickedness. By this criterion may every government be tried ; and with a constant view to this may systems best be formed.

The

The end of human government is the general good of man in society.* From wisdom and goodness alone can good be reasonably expected. Folly and wickedness being naturally, in full proportion to the validity of their operation, productive of evil.

Government is not merely desirable to man as a good, but it is absolutely necessary to him as a preventative of evil. It is of the first and strongest necessity. Without some advantages it is very possible to subsist, but under the pressure of some evils, existence itself becomes intolerable. Of this nature are the evils that arise from anarchy, or the total want of government.

* Warburton, in his *Alliance of Church and State*, B. i. ch. 4. endeavours to prove that civil society seeks not aligood as its end, but only one particular good, namely, *security to the temporal liberty and property of man*. However, as he afterwards explains himself, he seems to include under that expression, *temporal good in general*, which is the real end of civil society, and its ultimate object. Religion has a farther end, including also the former, the *eternal good of man*; to which the former must give way whenever there is a competition; and thus their objects are sufficiently distinguished.

These evils, and the consequent necessity for government, arise from the imperfections of man, and in exact proportion to them. Were all men *wise* and *good*, they might all with perfect safety be left to govern and conduct themselves. Other animals being governed by instinct, which is in fact the wisdom of God impressed upon them, require no farther government. But man, being guided by imperfect reason, and by will, both of them liable to great perversion and depravity, requires external government to counteract the natural operation of his follies and his vices.

Anarchy, or the total want of government, is therefore the greatest evil that can attend collective bodies of men, as it includes whatever evils may arise from the want of wisdom, and the perversion of will; from the operation of folly and wickedness altogether unrestrained.

A bad

A bad government is, in general, only a partial evil. No government can be imagined so completely bad as not to do some good; and whatever good it does is so much subtracted from the universal misery of anarchy.* A government so bad as to reverse the principles here laid down, appointing folly and wickedness in every instance to govern, and wisdom and goodness to be under their dominion, could not for an hour subsist; it must destroy itself: like a globe of atoms mutually repelling one another, it would immediately explode and perish.

Short of this, the worst government that can be imagined, so as to deserve the name of government at all, is greatly preferable to anarchy. It may be mended where deficient, and affords at least materials on which

* I call it universal misery, for in anarchy all the strong will oppress all the weak: and strictly speaking, to oppress is as miserable as to be oppressed: if not now, yet in the state of retribution to which both reason and religion direct the views of man.

to work. In total confusion, who shall discover where to make a beginning? What will succeed, no man can pronounce with certainty, as the contingencies on which it must depend are beyond all calculation.

Government, being thus necessary to man, is justly esteemed sacred. For the infinite goodness of God cannot but desire the general good of man, and the use of those means by which alone it is produced. Thus has government the sanction of heaven: and thus we fully understand why it is, that in the genuine revelation of his will, the Almighty has declared himself the general guarantee and guardian of every human government. His words are, "Submit yourselves to every ordinance of man, for the Lord's sake,"* which, though they have been perverted to support the absurd doctrine of passive yielding to oppression, have no such meaning; but enforce only the general doctrine of obedience: they declare, that to obey, and to

* 1 Pet. ii. 13.

support the established order of society, is not a civil duty only, but a religious obligation. This is the general rule; in ordinary cases, the universal command: with exceptions it has no concern. These, if there be any, (as we shall see hereafter there are) must be deduced from the same principle as the necessity of government itself, the general good of men collected in society. All other pretended exceptions are false, delusive, and dangerous.* In general, whoever resists lawful authority offends not only man, but God. If it be necessary to change the mode of government, from motives wise and good, that is a consideration wholly different.

* "The powers that be are ordained of God." *Rom.* xiii. 1. This text does not suppose any infallibility in the existing powers, or a necessity of submitting in all possible cases: it is a general assertion only, and has reference principally to three general truths: 1. That from the infinite power of God all other power must be derived. 2. That his superintending Providence ordains the general course of things. 3. That God is, in general, as above said, the defender of all legal government.

Such is the rational principle, and such its true connection with religion. That it is just, and that obedience to some established authority is generally necessary, may be farther proved experimentally by subdividing society. The smallest human society, a private family, cannot be conducted well without good government. Even on so small a scale, the folly or wickedness of the greater number must be over-ruled by some authority, or all will be confusion and contention. Whoever shall expect to manage even so small a society, by appealing in every single instance to the reason of each individual in it, without the intervention of authority, will find that he has badly calculated the effects of folly and perverseness, in resisting even the clearest arguments. If this take place in small societies, much more will it certainly happen in the largest. If the necessity be inherent in the first elements of human society, it is impossible that it should not be augmented, as the same component parts are multiplied.

All

All men partake one common nature, and the imperfections essentially belonging to that nature must of course increase as the individuals increase in number.

Government being to mankind so indispensably necessary, and being, for the same reasons, very difficult to establish, (since the very same human infirmities which create that necessity, excite also a spirit of resistance) to endeavour to dissolve it is the highest crime, in the sight of God and man, that can be committed against society. To endeavour so to alter an established Government, as to incur the danger of producing anarchy, is criminal in exact proportion to the degree of that danger incurred; and they who do so are responsible, in point of natural justice, for every evil consequence that may ensue, though not perhaps foreseen or wished for by them. Hence does every government, with great justice and wisdom, inflict its highest punishments on those who are con-

C

victed

victed of designing to subvert it. The faults that may be discovered in any Government, it is always right, in theoretical speculation, to remove. But if the proper remedies evidently cannot be applied without great danger to the whole, it generally is found, in practice, wiser to endure them. This, however, depends of course, on the proportion subsisting between the degree of that danger and the pressure of the evil. There are undoubtedly some faults too great for men to tolerate from motives of common prudence.

As Government is intended for the general good of society, the best and surest test of goodness in it is the happiness and prosperity of those for whom it is constructed : if these be great and striking, it can be with no good intent that evils very partial are noticed and exaggerated. To expect entire perfection is absurd ; and to hazard the greatest evils, for the sake of removing some that scarcely are perceptible, if it be not mere infatuation, must have

have some taint of wickedness. In what estimation should we hold a physician, who to remove a blemish in a finger, would put his patient's life to hazard? Amendments, that can be peaceably and safely gained, are at all times to be sought; but those improvements which beget contention, and awaken malignity, must be very considerable in value to repay the price of the attainment.

C H A P. II.

Of the Rights of Man.

IT is perfectly false, *that every man has naturally and essentially a right to govern himself, or to be governed by his own consent* ; and the assertion that 'he has, is either the boast of ignorant pride, or the artifice of wickedness to escape controul, and to render folly mischievous. No man can have a right to do an act for which he is altogether unfit. Wisdom and goodness alone have, in reason, any right to govern, since they alone are fit for it. The foolish and the wicked, therefore, in proportion to the extent of those imperfections, are disqualified from Government by nature, or by themselves, and ought to be controuled. But the foolish and the wicked compose no small part of mankind, who therefore should be ruled ; and if refractory, without their consent, and even against their

2

will.

will. To such imperfections, indeed, all men are so far liable, that there is no complete security against their prevalence in any individual. Hence, as we have seen, arises the necessity for Government ; which being so constituted as to be *wise* and *good*, may exercise a due controul over the imperfections of all.

Large bodies of men have no essential right of governing themselves ; for what no individuals have, the aggregate of individuals cannot have. In fact, experience proves their great unfitness for it ; the acts of very numerous bodies, operating collectively, being for the most part foolish, or wicked, or both : and that, for a most clear and simple reason, suggested by the very nature of man, that *passion is more strong than reason*.*

Still

* Whoever has considered unselected bodies of men as acting together, and the more numerous they are the more strongly the observation holds, must know that they

Still less has a majority any natural or essential right to controul a smaller number. Occasionally indeed, and for the sake of peace, it may be very prudent to agree that questions shall be so decided. Parties nearly balanced will produce a strong and perhaps a very pernicious contention, which should be, if possible, avoided : and if either party be by agreement to prevail, it seems most prudent to allow that preference to the greater number, which, if recourse was had to violence, it would most probably be able to obtain : in any other light, the claim of a majority is nothing. If 20, 100, 1000, or any number of men, be desirous to act foolishly or wickedly, the will of any single man, who wishes to act virtuously and wisely ought, in reason and essential justice, to prevail against them all.

they are directed usually, not by the wisest counsels, but the most specious, or those which are most artfully displayed ; that they adopt, in general, not the most virtuous plans, but those which are most flattering to their passions. It is even worse, for they who would act wisely, as private men, are often led to act in public foolishly.

- *Power*

Power is usually mistaken for *Right* ; and from that error is deduced the false principle contradicted in the opening of this chapter ; which, though it has of late been circulated as true, and even laid down as an axiom, is not the less erroneous. Great majorities have certainly the natural *power* of governing. In the collective body of a people the whole political strength essentially resides ; nor would it be possible for any measure to be effected, however necessary, were the general sentiments of a people strongly turned against it. Even external military force, if they were nearly unanimous, and firmly fixed in enthusiastic resolution, might extirpate them, but could not govern. Were a whole people resolved to live without all Government, as far as it is possible to live in such confusion, they certainly might do so ; but it does not follow that, because they have this natural power, they also have a right to exercise it. Those men have been in all times and all countries the most pernicious members of society,

ciety, who have been diligent to make the people know and feel their natural powers, concealing from them, at the same time, or not sufficiently explaining and enforcing their *natural duties*. Whatever is prohibited to man as wrong, must be within the reach of natural power, otherwise the prohibition would be foolish. Power and right are therefore clearly separable, and it is absurd to think that one includes the other, or to confound things that are naturally so distinct.

Men taken without choice in very numerous majorities of society, neither have the wisdom nor the virtue to conduct and govern themselves; they cannot, therefore, have a natural right to do so. By the necessary operation of man's inherent imperfections, a country governed by the multitude must become the seat of total confusion, and of utter wretchedness; the hot-bed of every evil and destructive passion; or, to use the energetic language of the Poet,

It

It must become a wilderness again,
 Peopled with wolves, its old inhabitants.*
 For in truth, where all govern, nobody is go-
 verned.

In this pernicious state, if it were the general and unalterable will of the multitude to live, that will could not be over-ruled, but then in all that number every individual would be highly and atrociously guilty, in the sight of God and man, for indulging a propensity so destructive and so contrary to right. Now the operation of such a will is always more or less to be apprehended, and from that very circumstance arises the chief difficulty of political contrivance; it being one of the most inherent evil propensities of man to resist controul and government, and generally with a repugnance the most violent and pertinacious when controul

* *ὅσπερ γὰρ τελευτῶν εἰλησιν τῶν ζώων ἀνθρώπος ἐστίν· ὅτω καὶ χωρισθὲν νόμον καὶ δικῆς, χεῖρις τοι πάντων· χαλεπωτέρη γὰρ ἀδικία ἔχουσα ὅπλα. *Aristot. Pol. i. cap. 2.* Ut enim homo omnibus partibus absolutus cæteris animalibus longè præstat, sic à lege justitiæque alienus, fit pessimus. Atrocissima enim est armata injustitia.

is the most necessary ; namely, when his will is bad and dangerous.

As men have not in reason any right to govern themselves, or to be governed by their own consent, so neither do there appear, in the established order of nature, any traces of a plan by which they may enjoy that privilege.

As soon as man is born he is subject, by the ordinance of nature and of Providence, to the government of others wiser than himself : he owes obedience to his parents, or to those by whom his infant weakness may chance to be protected. If independent rights of self-government were natural and inherent, they would belong to infants no less than to adults ; the *Rights of Children* would deserve as much respect as the boasted *Rights of Man* ; and consequently no child could justly be governed but by his own consent ; no parent could have any right to command the children he produced and nourished. To
assert

assert which would be no less an outrage to reason than to religion. So far is this from being true, that to controul their children is not only a right of parents, but a duty indispensably incumbent on them ; since otherwise, we know the growing mind would soon become depraved.

Man is thus born subject to a natural Government. As he grows to riper age, he must of course be subject to that Government to which his parents or supporters owe allegiance, and under which they found that safety and protection they were thus enabled to extend to him. To that which those obey who govern him, he must by implication owe obedience : and if at years of full discretion he resolve to fix his lot in the same country, he tacitly consents to live there on the terms on which he was at first supported, and to continue that implied allegiance. Thus, if there be any Government in the country where he is produced, he is born under an

implied, and he lives under an actual obligation to obey it, and if he disobey, is justly liable to punishment. If there be no Government already established, he, and every other individual, is bound in moral obligation to form, as soon as possible, and with their utmost wisdom and goodness, that which is so absolutely necessary to the welfare of human society. In doing this he will confer the greatest benefit he can upon the whole community.

Are there then no *Rights of Man*? there are undoubtedly, and those of the most clear and certain nature. In general terms, whatever man may reasonably expect from wisdom and from goodness, the universal sources of Government, is his undoubted *right*. The wisdom and goodness of God have given him life, and evidently mean to give a life well worth acceptance; consequently he has a right to expect of human wisdom and goodness that they will imitate the Divine, and

endeavour to secure to him his life and all that innocently conduces to its comfort. More particularly may he expect this, as it is the professed design of Government to promote the general welfare of society, which can only be effected by preserving, as far as may be possible, whatever is essential to the being and well-being of every individual. Now these essentials are life, and whatever belongs to the natural perfection of man ; as health, and the integrity of his limbs ; liberty of action, so far as may be not injurious to others ; personal liberty, property, reputation, and that rank and situation among men which he has fairly and justly obtained. The security of these is necessary to the happiness of every man : to have them, therefore, protected is the natural right of every man : and, by every good and well-formed Government, they are accordingly defended.

These are the *Rights of Man*, which wisdom and goodness will of course endeavour
to

to preserve, and which the law of Great Britain recognises in their very fullest extent.* Besides these there are no natural rights. In general, if a man be desirous to act wisely and virtuously, he has a right to expect support and protection; if he be desirous to act foolishly or wickedly, he should in reason expect that wisdom and goodness will exert themselves to counteract and punish him: nor has he even the smallest shadow of a right to look for other treatment.

In every instance wherein the *Rights of Man* above enumerated are not sufficiently

* See them fully detailed by Judge Blackstone, in his Commentaries, B. i. ch. 1. He reduces them to three principal or primary articles, the right of personal security, the right of personal liberty, and the right of private property. "Because, he very truly adds, as there is no other known method of compulsion, or of abridging man's natural free will, but by an infringement or diminution of one or other of these important rights, the preservation of these inviolate, may justly be said to include the preservation of our civil immunities, in their largest and most extensive sense."

protected,

protected, a Government is doubtless faulty, and ought to be amended. The best Government will contain within itself the means of making such amendments, whenever they shall appear necessary, without convulsion and without danger : and whenever there are, in the regular constitution of a state, such provisions for amendment, the guilt of seeking to produce it by means more violent, and of great hazard, will be very much enhanced.

To the above specified natural *Rights of Man* the claim of all men is equal ; for it arises to all from the same consideration, that of the wisdom and goodness of the Creator and common Father of mankind. The moral quality that leads us to respect them is denominated Justice : it is the foundation of all Law, and considers men as such, without respect to accidental distinctions. The disregard of these rights is called Injustice ; and the act of infringing them by the violence of
superior

superior strength, is named Oppression. Wherever there is not a sufficient defence provided for them in the constitution of a state, there is an opening for oppression ; which it is certainly important to fill up by wise and just provisions.

CHAP.

C H A P. III.

Of Liberty.

LIBERTY, in the most extended sense of the word, is the power of acting without any species of restraint : of effectuating whatsoever the will suggests. Such liberty belongs to God alone ; nor is it fit to be communicated to any other being. When united with perfect wisdom and goodness its effects can only be good : but combined with any degree of imperfection in those qualities, it must become dangerous in exact proportion to the quantity of that imperfection.

Such Liberty, therefore, is denied universally to all inferior beings : In the first place, physically, or naturally ; because their natural powers are limited. In the second place, morally, in such beings at least, as are capa-

E

ble

ble of moral action : all actions in themselves pernicious, that is, productive of unnecessary evil, being forbidden ; either by reason, as essentially offensive to the nature of that supreme Being, whose goodness we discern throughout his works : or by Revelation, which is an express declaration of that offensiveness, proceeding from the Deity himself.

The limits of the former restraint, that which is natural, are absolute ; since no finite being can possibly gain liberty to act beyond the limits of his natural powers. The moral restraint, even when adopted by religion, is conditional ; a moral agent being at liberty, or in other words, having the power, to transgress the laws of rectitude, and to do those things which he knows to be offensive to God, if he can resolve to risk the consequences.

But

But it is no advantage to such moral agent, to a man for instance, to be permitted so to exercise his natural free agency as to incur a sure and dreadful penalty. On the contrary, if the natural checks of reason and of conscience should not be sufficient to restrain him, every new restraint, every superadded temporal penalty, that can excite his fears, or over-rule his vicious will, is in truth a wise provision for his safety.

Liberty, therefore, is not an absolute good. Nor can it be by any means conducive to the proper happiness of any man, even in this present life, to have the power of acting foolishly or wickedly. The restraint of will without just reason is indeed an evil ; with it, the advantage far outweighs the pain of the constraint.

Liberty, so far as it is to man a real good, may be defined, the power of following the dictates of the will in all indifferent matters, and of acting in all others according to the

laws of wisdom and of goodness. This Liberty, which is made up of two of the natural rights of man, above enumerated, (page 21) of Liberty of Action, as there defined, and personal Liberty, which is, in strictness, only a part of the former ;* this Liberty it is, which every wise and virtuous man would strenuously assert for himself, and no less earnestly endeavour to obtain and to secure for others. For this the men who have fought and died, have fought and died like heroes, and like patriots ; their tombs are visited with respect, and their memory is consecrated by admiration. To this Liberty, they who have endeavoured to set the divine law in opposition, have grossly injured both. Religion violates it not ; but, with whatever else conduces to the true advantage of mankind, defends and consecrates it.

* Enumerated separately, for the sake of clearness ; lest any one, not perceiving the implication, should imagine it omitted

The

The violent abridgement of this rational Liberty, and the other natural rights of men, is oppression ; the pain of which will always make men feel the value of that freedom which they want, and usually, in time, produce a struggle to obtain it, with a strong enthusiasm to preserve it when acquired. Unhappily the same sensations do not make them fully understand its nature or perceive its proper limits ; whence, in the ferment of their eager passions, they are apt to seek instead of it licentiousness ; and to demand an absolute Liberty, instead of that reduced and qualified species, which wisdom knows to be alone conducive to their happiness.*

On this position, however, we may rest in practice, that in whatever country every

* In England the true notion of Liberty has, on the whole, been better understood than in any other country ; for though there have been times, even here, when the undefined notions of licentious freedom subverted all sound Government, yet the people were soon brought to feel and to repent their error.

man

man may do without restraint, whatever may be pleasing or advantageous to himself, and not injurious to other individuals, or to the community, Liberty is sufficiently established.*

* It is of course implied, that these expediencies should be equitably ascertained, and actions fairly judged; with permanent security for the continuance of these advantages.

C H A P. IV.

Of Laws.

AS the perfection of all Government depends upon the established agency of wisdom and goodness, particularly of political goodness, which is justice, it is necessary that there should be some fixed and public rules by which this benefit may be secured. Such rules are denominated *Laws*.

Laws, known and acknowledged, are, from the imperfection of human nature, equally necessary for the direction of those who govern, and those who are governed. For, in the first place, there would be manifest danger in suffering every case of right and wrong to be decided as it should arise. They who were called in as umpires might be either unwise, unacquainted with the general

neral principles of justice, or, in the particular instance then before them, biaſſed by partiality. But Law gives its deciſion in general terms, before the caſe occurs, and therefore is impartial ; it is made at times of leiſure and reflection ; and, if fitly made, by men who are well verſed in ſuch inquiries, diſtinguiſhed and approved for knowledge, wiſdom, and integrity : or it is deduced from long experience, and practices of known and tried utility. Laws thus conſtructed give at leaſt a promiſe and ſtrong probability of wiſdom and impartial juſtice. In the ſecond place, Law is neceſſary for the general direction of men living in ſociety ; who, without its ſalutary warnings, might offend unknowingly againſt the general principles of juſtice, and the rights which all ſhould equally reſpect.

Law, to be perfect, ſhould conſiſt of the deciſions of perfect wiſdom and goodneſs, on all ſuch matters as concern the regulation of
fo-

society. But such perfection cannot be attained or hoped for in any works of man. Were there a divine law promulgated, in that it would be reasonable to expect a perfect system. There is, in fact, a law existing, which proceeds from a divine authority; but that law is not formed or meant to be a guide in politics, or to lay down the plan of human * Governments; it is designed for higher purposes. This, however, should be observed in the formation of all human laws, that they in no respect may contradict the principles and spirit of those sacred ordinances; the rest is left intirely to the care, the virtue, and the wisdom of mankind.

The end of Government being the good of men in society, the tendency of its chief instrument, Law, should be to secure to every

* The law delivered by Moses was, indeed, a divine law, intended to direct a human polity; but, according to a system peculiar and singular, nor ever meant to be applied to other Governments.

man, as much as possible, the possession of his natural rights, above enumerated, without which he can have no full enjoyment of his life, or any other worldly good.

One primary essential of good laws is, then, that they should be equal; that is, that they should equally ensure to all, of every rank and situation, the same kind of protection; defending against all invasion the natural and inherent rights of every individual. Wheresoever there is, in this respect, any deficiency, so far there is, or may be oppression.

The first outlines of Law are simple, clear, and obvious, deduced from those necessities which all men feel alike; and, consequently, are in every country much the same. But the complicated interests of men, united into large societies, make it very difficult, in many cases, to determine what is best and wisest: and there are points, on the comparative

rative expediency of which disputes may be maintained for ever.

A system of laws, considered chiefly with respect to its general tendency and spirit, is called a Constitution. It is absurd to say, that any country, having laws, is without a constitution. These may differ in degrees of goodness, or they may be intrinsically bad ; but every country, not in a state of savage wildness, has some established constitution of its Government.

A wise man, if his integrity be equal to his wisdom, may do much towards drawing up a useful system or code of laws ; but it is not to be expected that any man, any body of men, shall so far succeed in an undertaking so extremely difficult and complex, as that the execution of the plan shall not occasion any evils, or inconveniencies, nor be liable to any objections. The best of speculative judgement is still fallible ; for which rea-

tion, in all matters that refer to practice, the best and only certain test of goodness is experience. In politics, perhaps more frequently than in any other science, the results of actual experiment are found directly contradictory to the first conclusions of mere theory. But the effects of that which has been long and fairly tried, are known of course.

To Laws, therefore, formed for general and daily use, and affecting by their operation all the various interests of mankind, their rights and comforts, this test alone can be with certainty applied ; especially when they are viewed together in a system, called a constitution. Particular Laws may admit of partial consideration ; but the general result, the tendency and spirit of the whole, can be ascertained only by experience. Where all the most important ends of equal law are fully answered, where the general and undeniable effects are liberty, security, and
happiness,

happinefs, to change the fyftem on the fuggestion of partial views, or even of general theories, however specious, muft be the work either of infatuated folly, or of daring wickednefs ; perhaps of both united.

Whoever undertakes to form a code of laws, or to amend one that exifts already, will, if he be wife, infer, or will retain with care each particle of ancient inftitutions, that he knows to have received the fanction of experience.

He will not wantonly reject even fuch inftitutions as have been merely proved to have no bad effect ; becaufe what he would fubftitute might, perhaps, turn out pernicious. He will new model, and not entirely reject all fuch as fhall appear to have in part a good, in part an evil tendency. Finally, he will be upon his guard particularly againft a petulant fpirit of innovation ; well knowing, that in many cafes, the beft expedients are

most obvious, and more curious refinements tend rather to perplex than to amend; and that, on matters the most intricate, in the great science of politics, he is far from being the first who has thus exercised his mind. Whoever, in these matters, fancies himself wiser than all who ever lived before him, has either not informed himself of what they knew, or is besotted in his own presumption.

CHAP.

C H A P. V.

Of Legislation.

BECAUSE, as was remarked above, no human wisdom can compose a perfect code of laws, and experience, the best teacher of such knowledge will, from time to time, suggest improvements upon such as have been made, it is necessary that a permanent, and always active power of legislation should exist in every state.

Nor is it merely for the sake of introducing such amendments as additional knowledge may prove requisite, that this provision must be made. Circumstances themselves are liable to change; and different situations of political bodies will call, undoubtedly, for different regulations. The great outlines of right and justice are indeed unchangeable ;
but

but many of those particulars which make up the vast detail of national policy, must frequently require a fresh modification. New interests, new relations, and new expedencies may arise, which could not be provided for, till time had brought them forth. Local and temporary laws will sometimes be required, or a temporary suspension of some laws that are in general necessary.

To obviate these and similar necessities, to which all human Governments must be for ever liable, a proper power must be established. Whence the question unavoidably arises, in what manner such a power may best be vested.

The power exists, without a doubt, originally, in the general body of the people; that is to say, the collective strength of vast majorities is such, that, as no Government could be formed at first against their will, nor any laws enforced, so neither without
their

their consent, or at least their acquiescence, can any changes be reduced to practice. But as in the former cases they were shown above to be bound by reasons of expedience and of rectitude, or natural duty, to allow a Government and Laws to be established; so are they held, in this point also, by the same strong ties, to give consent to such a plan of permanent legislation as wisdom and as justice shall require; and to let the power be vested wherever it may best effect the welfare of the whole community.

For the purposes of such legislation; for deliberating with solidity of judgement, and an ample range of intelligence on matters of some intricacy; for comparing old establishments with new proposals; deciding upon the exigence of untried situations, or discerning distant tendencies, the most numerous classes of a people, the tradesmen, artisans, mechanics, and all below them included in name of populace, cannot possibly be fit. It

G

cannot

cannot happen that their minds, unpractised in the careful use of the arts of reason, and by their necessary habits of life incapable of being so exercised, should ever gain the power of duly weighing questions of great difficulty, or unravelling the intricacies of political expediency.

Recurring to our principles, we find, that the qualities required for this, as well as every other purpose of legislation, are wisdom and goodness. But a populace enacting laws will always be an agent doing that for which he cannot possibly be qualified ; and consequently doing very wrongly. Such laws will have but little chance of being wise ; nor will there be much greater hope of goodness in the motives of decision. A popular assembly is the region both of prejudice and passion ; and the evil passions are by far more easily excited than the virtuous feelings. An assembly of that nature cannot think, and the men who suggest thoughts to it, will, probably,

contrive

contrive that they shall be directed to their own individual advantage. Such has been the general history of democratic legislation.*

The numbers, then, who have the strength have not the right to legislate. There cannot be a moral right for acting wrongly. For their own sakes, for the sake of the community at large, they must relinquish what they cannot justly assert. It would be a foolish and a wicked jealousy which should make them obstinately hold a power they cannot rightly exercise. If an observation of the stars could be of public necessity, the unlearned in such sciences would hardly claim the right of making it. In many respects, the art of legislation is still more difficult, and more beyond the reach of common minds ; in all respects, it is a much more dangerous art for those to try who cannot know its principles.

* See particularly in the histories of Athens and of Rome.

Where then must we seek our legislators ? Within those classes, surely, wherein by education, leisure, and other collateral advantages, the amplest means of knowledge and of wisdom are enjoyed. We cannot, indeed, with any certainty collect in human society the wisdom and the goodness which would be most desirable ; but we may and ought to take the fairest chance we can of finding both ; and after that, have only to restrain, as much as possible, the means of doing evil. Thus approaching, as in other human contrivances, as near as may be to that perfection, which we cannot fully reach.

The chance of wisdom will then be best secured, by taking men of liberal education, enjoying leisure, and all other means of information, and mental improvement. For virtuous conduct some tolerable security may be obtained from general character, and still more from vigilant inspection, and the jealous superintendence of the public eye.

The legislative power is of necessity, and by its very nature, great ; and the evil principally to be apprehended from its abuse is oppression. But of this, we must remember, the body of the people is the best and only adequate judge : they certainly can tell whether they are themselves oppressed or not ; can feel where they are hurt, and testify their wish to be relieved : and it is the very perfection of political contrivance, that every man should be employed in doing that for which he is most fit.

Establish then this intercourse between the people and their legislators, that the former may, at certain intervals, nominate the latter ; and you will obtain in the first place, the sanction of current opinion for the characters of those appointed, and in the second, a constant check upon the abuse of the legislative power, and the introduction of oppressive laws.

For

For these purposes, the best expedient yet devised is that of representation ; by means of which the legislators are selected from the most enlightened classes of society, and individually called forward to that post by public choice and approbation. To the consideration of this subject the ensuing chapter shall be set apart.

C H A P. VI.

Of Representation.

REPRESENTATION is not founded on any right inherent naturally in man to legislate for himself, or to be governed by his own consent ; for it has been proved that no such right exists : but on the right he has undoubtedly of being preserved from all oppression : for securing the enjoyment of which right, it seems, as was before observed, the best devised expedient that has yet been tried.

It may be defined a mode, by which the body of a people formally concedes its natural *power* of legislation, to those who have more right to exercise it ; namely, to those who are more likely to employ it properly ; retaining so much influence as may suffice to guard them from oppression,

Repre-

Representation is therefore perfect, not when every individual has a vote, * which is neither requisite nor practicable, but when, throughout a country, they who are most liable to suffer from oppressive laws, are enabled to select as legislators, those who are most likely to fulfil the duties of that office with wisdom and integrity.

To preserve the necessary influence of the people over those they thus elect, it is required that they should have the power of changing them occasionally, or of re-electing. The proper periods for exerting this power cannot perhaps be strictly ascertained by theory. The following general limits must, however, be attended to : that the time must neither be so long as to make the legislators careless of the feelings of the people ; nor so short as to render them the slaves of their caprices. These cautions are suggested the very spirit of the definition. There are besides collateral evils,

* I say every individual, for if every man had an inherent right to vote, every woman would have it also, if not every child of age to exercise it.

arising

arising from too frequent elections, which, with many other points, experience will best ascertain. In England, seven years have been found a period very convenient for the duration of the legislative body ; and though there still are many advocates for quicker returns of nomination, it does not yet appear to have been proved that the inconveniences of such a method would not overbalance its advantages.

To the question, “ who shall be the electors ? ” The general answer that suggests itself is this : in every district of the nation, some, that the interests of no part may be neglected ; but all, upon important questions, may be compared and duly balanced. As to number, the electors should be, upon the whole, so many, that the general body of the nation may have just reason to be satisfied with the influence it retains ; and that, in fact, whenever, upon any public measure, it shall be deemed expedient to know the

H

feelings

feelings of the nation, its general sentiments may be collected fairly from the tendency of the elections.*

Principal divisions of a kingdom, and principal towns, should properly be represented ; and the number of electors in each should, according to theory, be regulated by local circumstances. But these may vary much at different times ; places once important, may be at length reduced, and others of no note may rise to eminence ; if, however, on the whole, the general effects above stated be produced, it will most commonly be better that such partial imperfections should be tolerated, than that alterations should be hazarded which must produce great jealousy and fermentation. The great object in politics, is

* According to the modern notions of right, nothing can in justice do away the claim of any individual to a vote ; but this difficulty is one of the phantoms conjured up by false theory, and at the touch of reason vanishes.

not theoretical perfection, but practical expedience and security.

The right of voting in such elections, extended in every case as far as local convenience will permit, should not however descend below the sphere of property. From total indigence or dependence of situation, little sagacity and little freedom of choice can be expected; corruption and influence will there of course prevail, and defeat the genuine purpose of the institution. Property, (besides that it is the most vulnerable part of civil rights, being necessarily subject to taxation, and to depreciation from various causes, and requiring therefore the most efficacious defence) has this peculiar advantage in its natural effects on those who have it, that it creates a spirit of independence, and an active jealousy for the defence of every other real right of man. He who has a house, and family, and goods; and in his trade, at least, or other ostensible means of subsistence, a

kind of independence, will be alarmed at every movement that may hurt or touch him, in any of these vulnerable parts. He will watch with anxious eye even the remotest inroads of oppression. Whereas a man detached from all such ties, has only personal security to guard, of which, perhaps, he may be thoughtless ; or personal advantage to provide for, which oftener will seduce him from his duty to the public, than confirm him in it.

Property is, therefore, the best criterion whereby we can confer the right of voting : which, where the numbers will not thus be made too great, may be extended to every man who has a house or a lodging, with some ostensible subsistence for himself and family. Limitations, where necessary, must be directed by the general spirit of these observations ; excluding those who have the least, for those who have the stronger interest in the public welfare.

Represen-

Representation, with great advantages, has also some attendant inconveniencies. Elections, in very popular towns, can hardly be preserved from the disgrace of gross corruption, idleness, and tumult. In such situations, the right should, therefore, be as much confined as is consistent with the general principles of representation ; and the time of election as much abridged as possible. With these, and all restrictions, an election in a populous and busy place, will generally be found a temporary evil, and therefore should not, without good cause, be frequently renewed.

C H A P. VII.

Of the Legislative Body.

IN what class of society the legislators should be chosen, has been already stated. The description points at persons in a situation to have been well and liberally educated ; in affluent, or at least in easy circumstances. In general, the greater the fortune of the representative, the stronger his security from some temptations ; though this rule is not infallible. Great landed property, and in some measure, all great property, has this additional advantage, that it produces a strong interest to promote the general welfare of the country, by the distress of which, those will be affected in the greatest measure and proportion, who have the most extended possessions to suffer depreciation, plunder, or destruction. The interests of a country, however diversified in form, are all connected, more or

less, with landed property. The price of labour, of provisions, of manufactures, all immediately affect the holder of land ; who cannot therefore injure those who labour, who raise provisions, or produce manufactures, without partaking in their loss or disadvantage.*

Among the numbers such a class may furnish, those will be the fittest to be legislators, who shall be distinguished for abilities, integrity, political experience, or knowledge extensive and accurate, in any of those various matters which may become, in such assemblies, the subject of inquiry or deliberation. To such men, the public choice will of itself most naturally tend ; by means of the respect which common fame will always pay to characters of this description : it would, perhaps, so tend in every instance, were it

* It is found in fact, that in this nation, those who are called the country gentlemen, men of extensive landed property, form the steadiest and most uncorrupted source of legislation.

possible

possible entirely to destroy the influence of some secret motives, which the most prudential regulations can diminish only. To select such legislators is undoubtedly the interest and the duty of those who are allowed to vote ; which if they neglect, they must at their own risk abide the consequences.

The legislative body, powerful by the very nature of its office, should have no exclusive privileges, but such as tend to give it dignity. The laws its members form for others must be binding also on themselves : nor should they claim exemption from any public burthen, such only excepted as may be incompatible with their chief trust and duty.

From this assembly taxes, with the plan and mode of their assessment and collection, should originate. Because, connected as it is with every district of the nation, the interest of the whole must there be known : and because

cause by the great weight of property its members carry with them, they must be deeply interested to prevent oppressive and unequal burthens. Besides, which is indeed the most material point, they are at stated times responsible for their proceedings to the general body of the nation, which will not fail on such occasions to make its feelings known.

To secure this salutary effect, the votes of the assembly and its proceedings should so far be public, that it may be always known from whom each measure first originated, and by whom it was supported; but its deliberations should be strictly sacred at all times from all cabal, interruption, and influence; from insult, and every kind of disrespect.

The proper time for the duration of one assembly, before a re-election, has been above considered. (p. 33.) Provision must be also

I

made

made by law, that too long time may never intervene, by any means, between the dissolution of one house of representatives, and the assembling of another; lest the nation should be left without its legislators, and the public business stand suspended, or be carried on without due reference to those whose office is to check the inroads of oppression.

The fittest number of which assemblies of this nature can consist, is among the points which cannot strictly be defined: it will of course be regulated in part by the extent and magnitude of the community there represented. But this at least should be observed, that there be in every such assembly such a number, that all questions of importance or of difficulty may receive a due discussion, and be illustrated by various and extensive views, the result of different minds, and different habits of consideration. It must also, on the other hand, be recollected, that very numerous assemblies are tumultuous rather than
wise,

wife, and like bodies of unwieldy magnitude, impede their own operations. Experience seems to show that the utmost bounds of number, so as to be at all consistent with convenience, order, and wise deliberation, stand far below a thousand.*

From the principles laid down in this and the preceding chapter, we see beyond a doubt, how perfectly absurd must be the notion of directions given by the electors to the legislators; and how completely the permission of it would counteract the very purposes for which a representative is chosen. † The

* The national assembly of France seems to afford, not a refutation, but a proof of this assertion.

† It may be granted, that the word representative implies apparently mere personal substitution; but it must be granted also, that, in many cases, if the legislator represented, by any strong resemblance of character and acquisitions, those by whom he must be nominated, a house of this kind would be strangely filled. Grammatical distinctions are not always of the first importance.

body of a people unable, from defect of wisdom, or knowledge, to legislate for itself, chooses those who seem deserving of that trust, among the men who are most likely to be duly qualified. In these then it is necessary, for the time, to place full confidence : since to appoint a wiser man to act, and then presume to tell him what to do, is inconsistent. It is to confess, in the first instance, comparative inability, and then assume superiority : to call in a physician, and then attempt to teach him what he should administer : to choose an abler pilot, and then seize the helm. When questions are expected to be moved, in which the people take a lively interest, it is very natural that electors, not reflecting duly on the nature of their office, should be desirous to impose directions ; but it should not be permitted. Notions the most popular may yet be perfectly erroneous ; and it is fit that every question should be submitted fairly to the full discussion of wisdom,

and

and tried by the strong test of argument, not carried by the force of popular opinion. *

* Mr. Burke, in a speech to his constituents at Bristol in 1774, very ably argued the same point. " Government and legislation are matters of reason and judgement, and not of inclination; and what sort of reason is that, in which the determination precedes the discussion; in which one set of men deliberate and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?" With more to the same effect.

C H A P. VIII.

Of the Executive Power.

LAWS, to be completely perfect, should have, among their other properties, that of enforcing their own execution ; for, if they are essentially good, every failure of their operation, or delay in it, must be, in some degree, an evil. Such are the laws of God established in the visible creation ; they operate of necessity without external aid ; and in every time and situation, according to the state of circumstances.

Human laws, however, cannot have this excellence : the powers of man are not sufficient to confer it : they are dead, and their operation must be provided for by means extraneous to them. They cannot enforce,
they

they cannot even, with certainty, explain themselves ; for both which purposes there must be proper officers appointed.

To descend to the detail of such arrangements, is foreign to the purpose of this treatise. Suffice it to say, generally, that, in every department of them, knowledge and integrity must be the qualities required ; and that the removal of temptation, and the restriction of bad dispositions, must be provided for by every possible attention.

While all is peaceable and regular, the ordinary officers of law will, perhaps, be fully able to enforce its execution. But, as there may arise, from various causes, a disposition to resist, the means must also be provided of arming law with power to bear down opposition.

The whole force of the state should be, if possible, concentrated in the law : for that
which

which is for the sake of all established, should also for the sake of all be executed. It is in vain that Wisdom has decreed, if folly or perverseness shall be left at liberty to disobey. But the real force of every state, notwithstanding all endeavours to transfer it, must remain in the collective body of the people : and in very large detachments of that body there will always be a strength which it is not easy to oppose. To this strength, left at any time it be disposed to spurn, or disobey the laws, it is necessary to provide some counterbalance : and to establish somewhere an authority that may in general overawe, if it cannot always overcome resistance.

Disobedience and avowed opposition even to law established and acknowledged, must be expected from the vices and fermenting passions of mankind. Nor could express assent obtained beforehand effectually exclude this evil : for it is one thing to approve a proposition in cool judgement, or perhaps with-

out reflection, and another to continue that assent, when the passions are inflamed against the Law, or present interest seems to lead another way. Proportionable to the strength of passion, and the feebleness of reason, is the effect of those propensities which thus produce resistance; which, consequently, will prevail the most in those whose numbers are most formidable. The multitude is neither exercised to use its reason, or subdue its passions. Thus will even the expedient of a previous assent be found uncertain and inadequate, as a pledge of subsequent obedience. Nor can this feeble guarantee be had for the support of ordinary legislation, which must be carried on when the people cannot be collected to assent or to reject; and must be founded on considerations which, if collected, the greater number could not comprehend.

But if it be thus probable that the Law should be resisted, and if the natural strength

K

of

of multitudes be such as cannot easily be counterbalanced, there certainly is nothing more impolitic, than to arm the body of the people. This is adding force to that which has too much already ; it is giving to a powerful herd the fangs and the ferocity of lions ; after which, who shall attempt to be their keepers ? It is even worse ; for lions would attack their keepers only, whereas the people would destroy each other also. It is hostile to their primary and most important interest, which is that of being well and wisely governed.

Besides this, as the natural strength so likely to resist, so difficult to be resisted, requires some counterpoise, the force of arms must be reserved to strengthen that authority in which we place the energy of law.

Where the people are not armed, the command of military force may, indeed, confer on Government a strength which cannot often
be

be resisted. But in what hands shall such a power be placed? The experience of the world has shown, that armies so augmented as to be rendered almost irresistible, form an engine too destructive for any Government to be allowed to wield. Power may be abused, and therefore must be kept in stricter limits; when unrestrained, it actually begets abuse, by the temptations which it offers, and the corruption which it gradually produces in the human heart. A military force, too far augmented, produces generally a double tyranny: first, that of the governors over the body of the people; and secondly, that of the army, as soon as it has learned its own importance, over the governors themselves. So was it under the corruptions of the Roman Empire, so is it also in the Turkish. The army, therefore, as the only effectual counterbalance to the natural strength of multitudes, must be employed for the support of Law, and confided to the manage-

ment of the executive power; but then it must be held within such limits, as to augmentation, and under such restrictions, that it may not be in danger of becoming the means of violence, or the instrument of oppression. In civil matters, it must continue subject to the general Laws, and ordinary tribunals of the state; its regulation and employment must be confided to the hands of Government.

What cannot safely be conferred in the form of actual force, must be supplied by means of opinion; and the executive power, on which, as has been said, the energy of Law depends, if it be not made so strong as to destroy all opposition, must at least, for the sake of public tranquillity, be rendered so respectable, that it may not often meet it.

To produce this excellent effect, the most obvious and natural method is that of establishing

blishing a monarchy. To a King, mankind in general are disposed to look with reverence; and commands, consistent with Law, proceeding from that authority, will not often be disputed. The authority of a King is simple and intelligible; it resembles that of a father, which every man has been trained up to venerate; or that of a master, which every man has either held, or hopes to exercise. It is the most natural form of power, not only from its general analogy to these, but also as being that, to the establishment of which almost every state of incipient society directly tends.* If we go back to the origin of mankind, we cannot but suppose that, while the state of things continued peaceful,

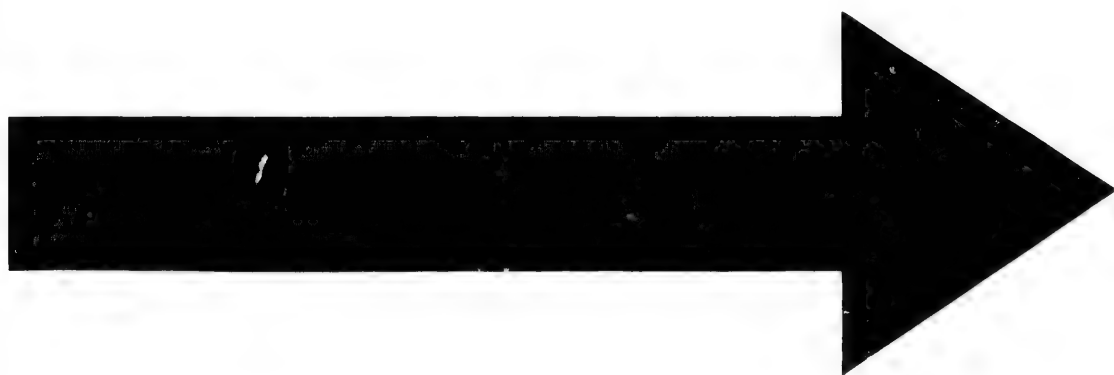
* Διὸ καὶ τὸ πρῶτον ἐβασιλεύοντο αἱ πόλεις, καὶ νῦν ἔτι τὰ ἔθνη ἐν βασιλευμένῳ γὰρ συνῆλθον. Πᾶσαι γὰρ οἰκίαι βασιλεύεται ὑπὸ τοῦ πρεσβυτάτου ὧς τε καὶ αἱ ἀποικίαι, διὰ τὴν συγγένειαν. Itaque initio civitates regibus parebant, et nunc etiam gentes; ab iis enim qui regio imperio tenebantur profectæ sunt. Omnis enim familia feniore, ut rege gubernatur; quare etiam coloniarum, propinquitatis causâ. *Aristot. Polit. i. 1.* See also i. 3. families,

families originating from one father, still alive, would continue to acknowledge the authority he had used in his domestic circle, and thereby confer upon him a kind of monarchy. Thus would the first man, during life, be allowed to govern his descendents ; and after his decease, priority of birth, which must have given before a kind of occasional and deputed authority, would be admitted as the fittest claim to fill the vacant place. In dispersion, families would naturally take up that form of Government to which, in their original abode, they had become habituated. Thus must have arisen the Patriarchal Government, and thus become extended ; every patriarch being, within his little district, a sort of Monarch. In any other casual union of families into villages, or villages into districts, the necessity of an umpire and referee, in all disputed points of right, would soon be strongly felt ; and this umpire, with a very little management, would soon become a monarch.

narch.* Thus would it be in peace. In a state of warfare, the chief who had successfully led forth his country's troops to battle, would, when that exigence had ceased, with ease secure obedience. Regard for his courage, and experience of his wisdom, added to the influence unavoidably arising from his military situation, if not an actual force retained, would lead, or overawe the multitude to rank themselves as subjects under him. Against external violence, he would, as a King, for his own sake, defend them; and in him, whose qualities they had already tried, they would not readily suspect abuse of power.

* This circumstance actually took place in the case of Deioces, who thus became king of Media. Deprived for a time of his equitable decisions, the Medes said, "Our present situation is really intolerable; let us therefore elect a king, that we may have the advantage of a regular Government, and continue our usual occupations, without any fear or danger of molestation." Their umpire of course was made their king. *Herodotus*, b. i. c. 96. &c. *Belsh's translation*.

In



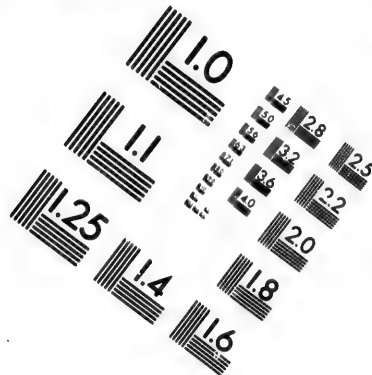
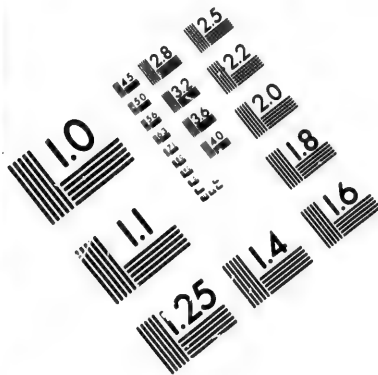
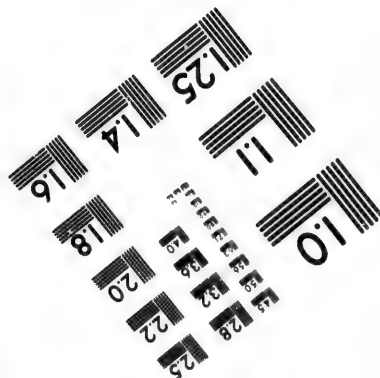
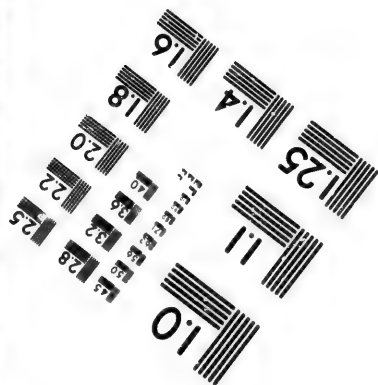
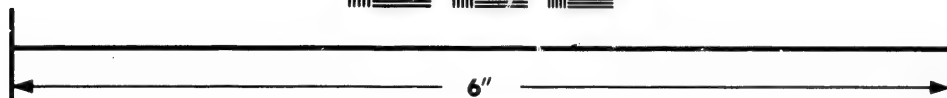
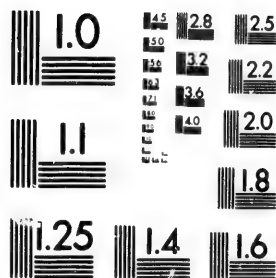


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
ROCHESTER, N.Y. 14600
(716) 872-4503



In these, and other cases, which might be imagined, the monarchical authority would, probably, have less or greater strength, according to the circumstances from which it happened to arise. But it would be still an authority of the same kind, and would afford, in every instance, a proof how naturally the societies of men coalesce into the forms of Monarchy.

If the power of a monarchy be ascertained and carefully defined by Law, and not too strongly armed with military force, there will be little cause to apprehend oppression from that form of Government. A nation that has once enjoyed the benefits of free and equal Laws, will not be readily persuaded to relinquish or neglect them. A King is a conspicuous object, whose actions many eyes will always be employed to watch, and whose intentions many minds, in such a state, will always be inclined

inclined to scrutinize.* He can take no daring step without creating an alarm, which would infallibly defeat his purposes. Limited as we suppose him, and supported rather by opinion than by real and efficient strength, to rouse the public apprehension would be to hazard every thing. Much greater cause is there to fear that by gradual, unsuspected, or yet more formidable, because applauded, encroachments, the body of the state that has the natural power, the people, or their representatives, may destroy that vigour which a monarchy should have, and with it the best safeguard of the law. Against this dangerous provision must be made.

Other modes have been devised of vesting the executive authority, but they are in general more remote from nature, more complicated, and less advantageous. Of num-

* See De Lolme on the Constitution of England, b. ii. ch. 2. where this truth is very sensibly suggested, and more fully explained, and illustrated.

bers placed in joint command it may be said universally, that if united, they are more formidable than a single man ; if discordant, they impede each other.* Among expedients to prevent

* Of a Sovereign Aristocracy there are at present few defenders. Of Republics take a picture from one who wrote from knowledge and experience, and speaks of small ones, which are supposed to be the best. " The mind is never subjected to a more odious tyranny, than that which prevails in these little republics ; where not only the rich citizen exerts himself into a proud master over his less wealthy equals, but where the contracted notions of this little tyrant become, if unopposed, the standard of reason to all the town. The members of small republics care only for themselves, and feel little anxiety about any thing that passes beyond their own limits. The all-powerful and imperious governor considers his little territory as the universe. His breath alone decides every question that is proposed at the *Guild-Hall* ; and the rest of his time is wholly occupied in maintaining his authority over the minds of his fellow citizens, in relating anecdotes of families, &c." *Zimmerman on Solitude*, chap. iii. p. 96. We may say, perhaps in general, of republican government, that it is an effort to make those govern, or appear to govern, who cannot do so in reality. They have the strength, but not the wisdom. They must be guided, they must, even for their

prevent abuse of power, that of a frequent change of governors has been devised and tried. It is, however, a contrivance which, on the very face of it, presents this disadvantage, that it excludes from the executive power whatever wisdom may be gained by habit and experience.* Besides, it is a plan which must infallibly produce contentions and intrigues. Ambition is a fierce and restless passion, and whatever station gives the

their own ease, be controuled; though perhaps without being conscious of it. The general arguments for democracy, oligarchy (or aristocracy) and monarchy are certainly not ill detailed by Herodotus in the speeches of Otanes, Megabyzus, and Darius, b. iii. ch, 80. See Beloe's translation, vol. ii. p. 96.

* The Romans, during the republic, often suffered from this cause; and still more frequently from that which follows. Contentions for the consulship make up a great part of their history. The constituent assembly of France, in its self-denying ordinance against a re-election, seems to have determined that the country should enjoy as much as possible, the benefits of ignorance and inexperience in its legislators; and the experiment appears to answer accordingly.

highest marks of honour and the greatest range of power, will become the object of ambition ; so long as even a hope of gaining it exists, the struggles and the strife of all who have pretensions will be renewed for ever.

Monarchy, among its numerous advantages, has this, that it prevents such competition for the highest rank and power ; and, if established in a line of fixed succession by hereditary right, excludes it almost totally. This form of monarchy has, therefore, by the wisest men been thought the best, and has most frequently been tried. The experience of the world is in its favour. One only disadvantage appears to threaten in it, which is, that in a line so limited, the power may happen to devolve on one who is not worthy of it ; whose talents may be mean, or disposition bad. Nothing can at first appear more formidable than this objection, and nothing more complete than the expedient offered to remove it, in making monarchy elective.

In

In this manner the worthiest man may be selected by the common voice, and called to fill the throne, to which approved abilities and known integrity, the highest claims to power, have given him just pretensions. But alas ! against this specious theory experience has invariably decided. In every age and every country, when the trial has been made, it has appeared, that specious arts have always more effect than real merit ; that influence, corrupt or violent, performs what independent choice should do ; and that, with such a prize as royalty to stimulate ambition, contention and corruption never cease. The consequence is this, that having, from the fear of a contingent evil, given up tranquillity, security, public happiness, and virtue, the nation that elects its king, in general finds its throne the prey of force, or the reward of fraud, intrigue, and treachery.

Experience also proves that the great evil apprehended from succession may be much
more

more fully obviated, than those which thus arise from an elective throne. It is certain that evil disposition may be nearly, if not totally disarmed, by general limitations of authority, compatible, at the same time, with the proper energy of government : and that deficient powers of intellect will not be felt, if by any means it can be made an interest, or, as near as may be a necessity, to the monarch, to employ, as the immediate agents of his power, the best abilities within his country. That this may be contrived shall, in its proper place, be shown more fully.

In giving an hereditary claim to the most ample powers of government, we do not then depart from our original position ; but we seek, by indirect contrivance, the assistance of that wisdom and virtue, which we cannot by direct provisions gain with any certainty.

Nor is it merely for the single purpose of investing Law with strength and dignity,

that the authority considered in this chapter is required ; discretionary power is also wanted ; for neither any written code, nor any legislative body, however chosen, can provide for all political contingencies. In the course of human affairs, circumstances must not unfrequently arise which call for prompt and secret counsels ; for quick decision upon new and unforeseen events, and vigour to enforce at once the resolutions formed. For these and similar purposes the power that must be vested somewhere, should not be divided from that which has been made executive : it is not indeed divisible, without creating two such rival powers, as never could combine or be at peace. It cannot be confided more judiciously than to the hands of monarchy, the leading qualities of which are vigour, promptitude, and secrecy.

We conclude, then, that the most convenient and most useful form in which the executive power can be conferred, with its attendant

attendant branches of discretionary power, is that of an hereditary monarchy.

The nature and the limits of the whole authority confided, thus shall be the subject of our next discussion.

CHAP.

C H A P. IX.

Of the King.

A KING, in a well-ordered Constitution, is the Law personified. The established Laws of the country over which he reigns, are the organs of his political existence: without them he can do nothing; with them, every thing. In the Scriptures the chief magistrate is represented as the Vicegerent of God himself, which in truth he is, his office being to enforce obedience to those Laws, which the Providence of God, by rendering them necessary to Society, has virtually established, and does expressly guarantee. The person of a King is, therefore, justly reckoned sacred, and the style of Sacred Majesty, and, by the Grace of God, with the religious ceremonies attendant upon coro-

M nations,

nations, are all so well and properly devised, that they alone can censure them, who also aim their bold objections against the Throne of Heaven itself.

The Sovereign is distinguished, therefore, from every other member of the State ; the Majesty of public justice dwells upon him, the splendour of public honour blazes round his throne, he holds the highest station that the Law admits, and ultimately is the source of honour to all others. All this is absolutely necessary to maintain his consequence in the estimation of his people, and to fortify by opinion and by expectation that authority, which, though it be not safe to make too strong in actual force, it is by no means less unsafe to leave devoid of energy, or in a state of weakness. To this end serve the Crown, the State, the Palace, the grandeur and the forms of courts ; attendance, and respect, and all that shows a King to be what no man else within the State can possibly assume.

assume. The expences of a court, which to some nicely-calculating œconomists has appeared a serious argument against its very existence, are thus repaid most amply to the State by the dignity that thence accrues to Government and Law. In the splendid person of a King, much more than in their abstract existence, are these most necessary engines of society respected. From the centre of a metropolis to the remotest corner of a State, the efficacy of that great name is felt,* and trade at the same time grows rich by the supplies this very splendour draws, from those who otherwise might hide it in their coffers,

It is false, fallacious, and of very evil tendency, to call a King *a Servant of the*

* A Writer of more fame than merit has said, " If " I ask a man in America if he wants a King, he re- " torts, and asks me, if I take him for an idiot?"— An Atheist would, I fancy, retort in the same manner, were he asked concerning the necessity of a God. As an argument it is of equal value in both cases.

*State.** The language of the British Constitution is, on the contrary, *Our Sovereign Lord the King*, and it is the language of reason also; the mistake appears to have arisen in this matter from a confusion of ideas between *serving*, and *rendering service*. It is undoubtedly for the *service* of the State, that is, for its advantage and benefit, that the Royal Power is constituted; but the benefit the King confers, is by *commanding*, not by *serving*. It is a head the people want, and not a servant. Not a deputy appointed to perform a task they might have undertaken for themselves, but a chief invested with due power to execute what they could never do themselves, *to govern them*; a multitude go-

* Or, as the present fashion is in France, *the highest public Functionary*. Such is their grotesque expression. It is founded nearly on the same idea; that of the King being appointed by the people to perform those functions, which, though they have a right to do it, they do not choose to exercise themselves; he is, therefore, in that sense, their servant; or, at best, the deputy to the Majesty of the people.

verning

verning itself would be a multitude ungoverned. The power of every Sovereign must, indeed, originate from his people ; for power to govern many cannot naturally exist in one, and human force, (excluding discipline and arms) depends on numbers only. But power is thus conferred, not that the general will, if such a thing can be, should be at all events performed ; but that it may be, whenever it is foolish or pernicious, over-ruled. A King, unless the meaning of the name be arbitrarily changed, is one whose high authority is ultimate on earth, and subject only to the Law : and to the Law he is considered as subject, not because it is, or ever was, the will of all the people, but because it is supposed to be the voice of *wisdom* and of *goodness*. Because it is designed to do for all, what the indulgence of their own caprices never could effect, to make them peaceable, secure, and happy.

All

All bodies that are to act in concert, require a head ; which head is not the servant of the members, but the master. Of this claim even an actual election does not at all invalidate the force. A general is the master of his army ; suppose him, then, elected to that office ; he is, when in it, not the servant of the rest, but the commander ; otherwise he is in vain appointed, and the service he should render cannot be performed. If the army will command its general, instead of paying him obedience, his appointment from the first was nugatory, and the whole will go to ruin. When the Prætorian soldiers chose a Roman Emperor, they chose for themselves not a master only, but a despotic master : so far is any superiority from being connected with the right, or even the practice of electing. To appoint a servant to govern, does, indeed, approach so nearly to a blunder, that when exposed, it will be, we may hope, exploded.

The

The power of the collective body of a people is, therefore, here, as it has been frequently before, acknowledged; but their right to have their arbitrary will prevail against the wisdom of their rulers, by whatever title they may be denominated, is denied. They have the power to change at pleasure even the whole nature of their Government; but the right to do so must depend upon the merits of the case. To change it from a better to a worse they cannot have a right.*

The person of the King must be of course inviolable; since to arraign, confine, judge, condemn, or punish him, would imply su-

* This is strongly and singularly illustrated in the History of the Jews. That people, in the time of Samuel, had the power, humanly considered, of declaring they would have a mortal King; even when the Lord their God was their King. To this perverse determination of their will it pleased God to give way, that he might make their crime their punishment; but it will hardly be contended that they had *a right* thus to reject the Government of God.

perior

perior authority : which if there exist, he is not what our theory demands, a Sovereign. The metaphorical personage of the Law is, indeed, superior, in some sense, even to the monarch ; because to her commands, for the reasons above assigned, he owes obedience. But Law, from the very nature of her existence, cannot explain herself beyond her written words, which are liable, like other writings, to false application, and to malicious or injudicious interpretation. In doubts, rising from such circumstances, who shall be the judge between the Law and him who, next to her, is supreme ; who is himself the ultimate interpreter on earth of her determinations ? Or if there were no doubt, the removal of a Sovereign is a measure so replete with the very worst political dangers, that it is wiser far to place responsibility upon some lower step of the great scale of Government, than to attach it to the highest. If once the key-stone of the arch were shaken or thrown down, the multitudes who

lived beneath its shelter would have cause to tremble.* To speak without a metaphor, the King, the representative of Law, must be secure, or Law itself is not secure; the executive and discretionary powers of monarchy are always necessary to a State, and therefore must not be suspended; transferred they cannot be without a total alteration of the system, attended with such dangers as from changes of that kind must ever be inseparable.

Such is the origin of that most wise, as well as ancient, maxim of the English Law, *that the King can do no wrong*; by which, as is well known, it is not intended to be asserted

* The authority of Mr. Locke upon this subject will, doubtless, be considered with respect. "The harm which the Sovereign can do in his own person not being likely to happen often, nor to extend itself far; nor being able, by his single strength, to subvert the laws, nor oppress the body of the people—the inconveniency of some particular mischiefs, that may happen sometimes, when a heady

N

" prince

asserted that he is morally, as a man, infallible ; but that, as Sovereign, he cannot legally be accused, or considered as involved in any guilt.*

Where then, it may be asked, is the security of the people against the misemployment of a power, thus placed above responsibility ? It is obtained by the easiest of all contrivances ; by establishing the respon-

“ prince comes to the throne, are well recompensed
 “ by the peace of the public, and security of the Government, in the person of the chief magistrate
 “ being thus set out of danger.” *Locke on Government, apud Blackstone. Comm. i. 7.*

* It means altogether, according to Blackstone, two things : First, “ that whatever is exceptionable
 “ in the conduct of public affairs, is not to be imputed to the King, nor is he answerable for it personally to his people : for this doctrine would totally destroy that Constitutional independence of
 “ the Crown, which is necessary for the balance of
 “ power, in our free, active, and, therefore, compounded Constitution.” And secondly, “ it means
 “ that the prerogative of the Crown extends not to
 “ do any injury ; it is created for the benefit of the
 “ people, and, therefore, cannot be exerted to their
 “ prejudice.”

bility

bility of all the agents of that power. By his own personal strength, a King, like any other single man, can do but little that is formidable;* nor is it likely that, for his character's sake, he will attempt, in a free country, any thing whatever of that kind: beyond this, all must be performed by orders. Now as soon as it is fully understood that no command from the crown, however positive or urgent, can secure the person who obeys it from the legal consequences of the act, there will be, to the execution of all improper orders, a difficulty opposed which cannot very easily be vanquished. Again, with respect to measures of a public and political kind; if the immediate servants of the crown be considered as advisers of the Sovereign, and held responsible for all such acts, as originating from their counsels; the measures may be tried as justice may demand, the advisers may be punished as the law shall have directed,

* See the citation from Locke in the preceding note, page 89.

and yet the dignity and independence of the legal head of all remain unviolated.

In this expedient will be found a remedy for the only very important inconvenience to be apprehended from hereditary monarchy ; the inability or depravity of an individual on whom the sovereignty may happen in the course of the succession to devolve. Of this eventual evil, which was hinted at before, we here perceive the means of fully obviating the effects. Whatever may be the supposed character of a possible inheritor of the crown, his advisers and immediate agents must be men who can defend and justify their measures legally, and in a public discussion ; and will be driven successively from their places, by the influence of the legislative assembly, so long as they shall give pernicious counsels ; or, what will be in the eye of the constitution the same thing, whenever they consent to execute the orders of a sovereign, either unable to direct well, or desirous to direct improperly.

By

By the same contrivance, we shall have attained the most important object in the whole theory of Government. Government, according to our fundamental principles, in the hands of perfect wisdom and goodness, would be perfect. The power of such a Government would require no limitation ; on the contrary, to introduce limitations would be, in that case, to introduce defects. Thus, the infinite and illimitable power of God effects the preservation of the Universe ; were it possible that any external restrictions could affect that power, the energies of perfect goodness and wisdom would be in the same degree restrained, and the government of the universe would be rendered, in proportion to that restriction, defective. But from power committed to human agents, it is impossible to separate much imperfection, both in wisdom and goodness ; such power must, therefore, be restrained, and the most effectual security against the misemployment of that which must be left to form

form a Government, is to make the persons it is vested in responsible. This responsibility however cannot, for such reasons as have been assigned, be made to bind the hands of sovereignty itself. It would be an absurdity, it would be creating a sovereign to judge the Sovereign. But the same advantage, without the same absurdity, will be obtained by making the immediate agents of the crown * responsible. Thus shall we acquire the advantage, if not of wisdom and goodness, yet of that which must in human regulations be accepted as a substitute; wisdom, and the restraint of evil dispositions. Without a competent degree of wisdom, the post of minister in a free state cannot be long maintained;

* I make no apology for using this metaphorical expression; the attempt to ridicule it that was made by a hostile pen, is too silly to affect one reasonable person. A child who does not know that by the crown is meant the king, or the royal power, should be sent to school to learn the general use of metaphors: a man who has not learnt it, must be past instruction.

and,

and, if virtue should by chance be too remiss in the task of scrutinizing, malice itself will always jealously examine the designs of those who hold a station so exalted. With this security, the Monarch may be safely vested with that power his dignity so indispensably requires, of naming his own ministers. The external pressure of circumstances will speedily remove from such an office those that are unfit to hold it ; and among the rest, it is desirable, as well as just, that the Sovereign should be left at liberty to choose.

Having thus discussed some leading points relating to the regal power, the question naturally occurs, what other matters must be left in the disposal of that power. To this a general answer has been virtually given in the enumeration of those reasons which make a King desirable ; and render him, in reason, necessary to a constitution wisely regulated. By these, it evidently appears, that the power intrusted to the Monarch must be such as
shall

shall, when requisite, enforce obedience to the Laws; and provide for all those state occasions which may call for secret counsels, and for promptitude of execution.

For the former purpose, the King must have the management of all such military forces as are deemed consistent with the maintenance of liberty; and what he wants in actual power, must be conferred in splendor, dignity, patronage, and influence; by some of which opinion, and by others interest * is engaged in the defence of legal Government.

The

* In England, where whatever may in any way affect the cause of public liberty, has been more fully sifted than in any other country, much has been said and written upon the subject of *influence*. The question lies, in fact, within a very narrow compass. Influence is a supplement to limited authority which the corruption of national morals, and that alone, will render necessary. Would men attend impartially to reason, a Government whose movements were discussed, must either proceed well, or else be liable to change :

The latter purpose above recounted, points most evidently and unequivocally, at negotiations, treaties, the management of war, and all relating to it, including the right of declaring it, and of making peace; all, however, to be executed by the agents of the crown, under the tie of their responsibility. But by them exclusively, as being matters which require the highest political wisdom, knowledge, and experience, attended with

change: but when men will not do rightly without an interest in it; when devotement to parties, without regard to measures, is openly avowed; when some are so atrociously besotted to their private interest, that they can even wish for the heaviest misfortunes to their country, in order to drive out a set of men whom they may then supplant; the wheels of Government, thus clogged by cold friends, and resisted by virulent opposers, could not possibly move on without the oil of influence; and they who would deny it to others, would be the first to pour it in themselves. In few words, virtuous and patriotic spirits would resist influence, and reject it with disdain; corrupt and interested minds will not do even what they wish themselves, in state affairs, without its impulse. In opposing Government, much influence will in such times be always employed; in defending it, there must be therefore a strong necessity to use it.

Q

much,

much secrecy, unshaken steadiness, and prompt activity ; all of which can neither be expected in the current, but crude notions of the multitude, and most of which are incompatible with the proceedings of any large assembly.

Invest, then, the hereditary Sovereign of a free and reasonable monarchy with dignity and splendor to command respect, with the power of doing good to gain affection, with patronage to govern interest ; make him the great source of right and justice, of honour, and preferment ; arm him with due strength to crush a partial rebellion, though not to exercise oppression : bestow on him the means to be abroad respected, relied upon, and if there be occasion, feared ; and for the use of these prerogatives, let not himself, but those whom he employs, be answerable ; and the state will then be made a body fit for action, and yet secured from most of the disorders which the fermentation of bad passions might produce.

It

It seems not in this place necessary to descend to the detail of all the branches of prerogative. The reasonings above stated, will apply to the defence of those with which the monarch of Great Britain is invested, and will show the great necessity of some of which a neighbouring king has been despoiled. To do much more, is beyond the purpose of the present treatise.*

* For fuller information on this subject Judge Blackstone's excellent chapter on the prerogative should be perused with care, (*Comm. b. i. c. 7.*) in which republican principles are occasionally opposed with manly vigour, and great political sagacity.

C H A P. X.

Of the Balance of Powers.

WE have now two powers established in our state, and only two, the natural power of the people; operating through the legislative assembly, and the conceded or artificial power of the Sovereign.

Now as one indispensable guide in political regulations and contrivances is the knowledge of human nature, the subject to which they must be all applied, we must not fail to recollect that, of all the passions of mankind, the most restless and insatiable is the love of power; and consequently, wheresoever power is given with limitations, attempts must be expected to shake off restraint, or to acquire at least an ampler share. Suppose, then, the

two

two powers established in our fancied state, inclined, as they would be, to make incroachments on each other ; it is evident, that, as our regulations stand at present, the contest would be perfectly unequal.

The Sovereign, limited by Law, and armed with such a force, as is calculated rather to prevent the disposition to resist, than actually to overcome great efforts, still less to make addition to his power by any acts of violence ; having beyond this, no other support than public opinion, and an influence which can operate only within a certain distance from the throne, and not at all upon the bulk and body of the people ; being besides a conspicuous, and generally, among a free people, (though frequently without the slightest reason) a suspected object, could do but little towards acquiring any new accessions of authority : and whatever he might do by unsuspected means, would be with ease, as soon as its effects discovered it, repressed,

repressed, and for the future totally prevented, by a single effort of the legislative power.

On the other hand, the legislative body, holding an authority derived directly from the people, and by election reverting to them periodically, will not so readily incur suspicion of ambitious aims : or if it were suspected, the people would in general be easily persuaded that the power their representatives acquired was gained, in fact, to them ; and consequently would be ready to support and countenance such efforts.* Besides this, two of the greatest powers that can be given, are already, by our supposition, vested in

* In England where, since the dreadful troubles of Charles the first's reign, and the miseries ensuing, the people have been more enlightened than in other countries, concerning the comparative merits of Monarchy and Democracy, they have been known to make strong efforts in support of royal power. But this is a degree of political sagacity not to be expected in general, nor to be calculated upon in theory.

that

that body : these are the power of granting money, and the power of making laws.

In the form of money, the public force is represented most compendiously ; without it neither military strength can be supported, nor any effort of importance made ; not even outward dignity and splendor can be long maintained. Whatever may be nominally the powers conceded to the Sovereign, they are all at once suspended if the public purse be closed against him.

The legislative authority is also of so great extent, that it can at any moment change the constitution. Whatever be the powers established, to whatever hands entrusted, or in whatever form conceded, a single act of legislation may abolish them at once : or if that were too bold an effort, on the supposition that the body of the people might prefer the former state of things, and would resent such daring innovation ; yet still, by imper-

2

ceptible

ceptible approaches, which the people could not trace, nor would be likely to suspect, an attack upon the regal power might be maintained, which in the end would render it subservient wholly to the legislative.

Against such evils, whosoever wishes to preserve the form, and to enjoy the great advantages of monarchy, will be inclined to make effectual provision.

With respect to money, it must be confessed that the restraints which the withholding of a full command of it imposes upon monarchy, are absolutely necessary, to prevent oppression. The powers that must be vested in a King are such, that could he gain supplies at pleasure, neither property nor freedom could have that security which the rights of man, above enumerated, demand. Making then, at proper times,* some ge-

* For instance, at the accession of a new king, as in England.

neral and adequate provision to support the royal dignity, we must in other matters leave the monarchy with this strong check upon it. Nor is the power of thus withdrawing aid so much a force offensive as defensive : it may disarm a power that seems too formidable, but raises up no arms against it.

The power of legislation is very differently circumstanced, it may be used to make attacks direct or indirect ; and as, in our considerations on the subject of representation, it was advanced as a maxim, that it is the perfection of political contrivance, for every man to be employed in doing that for which he is most fit, so here also we may apply the same remark. To watch over his own prerogative, the sovereign is undoubtedly most fit. He, with his immediate advisers, can best perceive when an attack upon it is either made or meditated : his interest is the most immediate and most urgent, to detect in-

P

croachments,

encroachments, in whatever manner covered and disguised ; and he is first concerned to stand upon his guard against that rival power which must by its own natural strength prevail, if not resisted with some care, and balanced by some force of counterpoise.

To give the Sovereign, then, the means of meeting such attempts with proper vigour, it is necessary that he should be allowed to form an integrant and independent portion of the legislature : to every act of the great and popular body already constituted, his full assent must be required ; his single negative must be made of force sufficient to prevent all innovation in the law, which he may apprehend as hostile to his power and dignity, or may esteem for any other reason inexpedient ; and this without delay or interruption, lest the adverse power should gather strength to make resistance.

With

With respect to this great power of counteracting the proceedings of the other branch of legislature, we have seen that it is necessary to defend the royal functions. It must be considered also, lest it should appear more formidable than in truth it is, that it is *innovation* only which the King is thus enabled to resist. If the constitution of the state was tolerably formed before, it cannot greatly suffer from the want of a new Law, which, in the judgement of the Sovereign, or of his advisers, (by the supposition, men of, at least, some competent degree of wisdom) shall appear to be of evil tendency. For the exertion of this, as well as every other branch of sovereign authority, those counsellors will be of course responsible.* If, however, the Law proposed, and thus resisted, should have found wisdom on its side, or very evident ex-

* Unless, as is supposable, he should dismiss them at the instant, and turn the privilege against their measures. In this case, it would remain to be inquired by what secret advisers this step had been suggested.

pediency, it is not to be feared that men so situated as the royal ministers, or even the Sovereign himself, in a state so constituted as here has been laid down, will venture long to stand against the general conviction of the public.*

Nor will it be sufficient thus to arm the Sovereign against attacks, direct or indirect, proceeding from the legislative assembly ; he must also be enabled to put a stop to the deliberations of that body by dissolution, whenever it may be their general tendency to

* This power of rejecting bills by royal negative, has been acknowledged in its full extent by all the writers on our constitution. That it is not dangerous, is proved sufficiently by history : yet it was, within the memory of all, the favourite opinion that the crown could not with safety use it ; and the doctrine of many, that it ought not to enjoy it. That the doctrine is erroneous, I have not the shadow of a doubt ; and if the opinion be just, our constitution has received, in that respect, a considerable alteration, which may in time prove fatal to the very existence of the monarchy.

thwart and to impede the necessary powers of Government, or to declare a hostile disposition towards himself, or those whom he employs; or for any other cause to be determined by his counsellors, under the restraint of their responsibility.

This is also a power which by its nature cannot greatly be abused. We have supposed it fixed by Law, that no long time shall pass without convening an assembly of the representatives; dissolution, therefore, followed by a re-election, is in truth an appeal only, and a recurrence to the people; and in every such recurrence, strength is given to popular sentiments, and an activity to popular influence, which for their own sakes, the men who hold the reins of Government will not too frequently bestow. It is indeed, in the first instance, an exertion of great apparent power against the popular division of the legislature: but, in the second, it submits itself to the decision of the people.

It

It sends back the legislators to their constituents ; but the people, in their turn, can fully show their sentiments, either by a re-election of the same discarded representatives, or by the choice of others still more friendly to their wishes or pretensions. After which, it is most evident, that nothing could be gained to Government by further dissolutions,

But when we have thus balanced with some care the two great powers of state, the King, and the assembly chosen by the people ; and have provided some defences for that power which is artificial, and originally weak, against that which is natural, and essentially strong ; that which is constituted for the purpose of producing a good Government, against that which, by its inherent and indestructible strength, occasions the chief difficulty in forming any Government at all : when all this has been done, by the means above recited, there will still subsist, without some further

farther care, one evil of no trifling magnitude. It is this : that in every struggle and dispute, the power and will of the monarch will be set in competition, immediately and solely, with the power and wishes of the people ; which will tend to make the former odious, and the latter violent : subverting thus at once the chief support of a free monarchy, opinion, and destroying the chief pledge of popular obedience, the want of disposition to resist.

Against this danger also we must make provision, and the best expedient that reason can suggest is that of raising up some intermediate power between the sovereign and the people. The mode of doing this shall be considered in the chapter following.

C H A P. XI.

On the Creation of an Aristocratic Order.

AS we have at present but two legal powers within our state, and each of them an independent portion of the legislature, it is evident, that if we would prevent their too immediate shock and conflict, we must raise up a third, of similar authority, to stand between them.

To render this great service, nothing can be better fitted than an Aristocratic Body, which, standing in political situation, between the sovereign and the people, or their representatives, may be inclined by interest, and habitual notions, to resist incroachments made on either side.*

This

* In this opinion our most able statesmen of all parties are at present happily united. Mr. Fox, in
the

This aristocratic body must be formed,
like the democratic, into a separate and inde-
pendent

the debates on the Quebec Bill, May 11th, 1792, "laid
"it down as a principle never to be departed from,
that every part of the British dominions ought to pos-
sess a government in the constitution of which monar-
chy, aristocracy, and democracy, were mutually
blended and united; nor could any government be a
fit one for British subjects to live under, which did
not contain its due weight of aristocracy, because that
he considered to be the proper *poise* of the constitu-
tion, the balance that equalized and meliorated the
powers of the two other extreme branches, and gave
stability and firmness to the whole." And afterwards
the same gentleman declared, "that so necessary was
aristocracy to all governments, that in his opinion,
the destruction of all that had been destroyed, could
be proved to have arisen from the neglect of the true
aristocracy, upon which depended whether a constitu-
tion should be great, energetic, and powerful."
Stockdale's Debates, p. 516. and 520. An. 1791.

Mr. Pitt also, alluding to Mr. Fox's words, said,
that "Aristocracy was the true *poise* (as the hon. gen-
tleman had emphatically stated it) of the constitution.
it was the essential link that held the branches toge-
ther, and gave stability and strength to the whole.
Aristocracy reflected lustre on the crown, and lent
support and effect to the democracy, while the demo-
cracy gave vigour and energy to both, and the sove-

Q

reignty

pendent assembly,* for the purposes of deliberation, and entrusted with an equal share of legislative power. Questions of much intricacy and importance will obtain, by this contrivance, full discussion : taken up in this assembly on different grounds, and viewed in new and various lights, it may be hoped that they will gain elucidation, in one part of the process or another, from the beams of truth. And if there be, at any time, occasion to resist opinions, which, though false, may happen to be popular, the effort may be made more safely by a body of this nature, than by the single act and intervention of the Sovereign.

reignty crowned the constitution with authority and dignity." *Ibid.* p. 521.

See also the very striking quotation from the writings of John Adams, cited by Colonel Simcoe in his speech upon the same occasion. P. 513.

* It is true that there were strong reasons, at the first assembling of the deputies in France, for an union of the orders in one house ; but reasons that must vanish with the temporary exigence and the ancient government.

A rich and hereditary nobility, created originally by the Sovereign himself, will possess those properties exactly, which we seek in an order so to be employed. Connected with the monarch by the mode, and brought near to him by the degree of their political elevation, these nobles will surround his throne, augment its daily splendor and its general influence, and form a bulwark between him and democratic power, without conferring any real strength that can be rendered dangerous to liberty. Independent at the same time, both by wealth, and by hereditary right to hold or to transmit the honours once conferred, this order will not be enslaved by royal influence; even the personal obligation of a gift that cannot be retracted, will not bind too strongly or too long, when other motives intervene to counteract it.* Such a body will be, if any can, above cor-

* In England it has been proved, that the obligation of a title conferred, may be forgotten in a time incredibly short.

ruption. Interested above all other subjects in the preservation of that social order on which their rank depends, and as much, at least, as any others in the prevention of such arbitrary measures, or such popular licentiousness, as may lessen the security of property, or other personal rights, the class of nobility will oppose itself alike against the machinations of a King desirous to extend his power beyond its proper limits, or the excesses of a people desirous, in the name of liberty, to act the tyrant.* It will be found, therefore, the

* “ On peut douter que le Roi accepte *librement* la proscription de la Noblesse, et sanctionne le malheur des plus illustres familles du royaume. Une profonde reflexion a dû lui faire connoître que dans un grand état, la Noblesse, non point comme ordre, si l’on veut, mais *comme classe, comme élément d’un sénat national*, présente un appui durable à la constitution, à la liberté une mesure sage, au trône la splendeur et la puissance qui lui conviennent.” Thus writes a sensible and intelligent author, by birth a Genevan, M. Mallet du Pan, in the *Mercure de France*. He then asserts the same, in effect, as I have said above, and proceeds, “ Ces vérités contre lesquelles il est de mode d’argumenter aujourd’hui, ne sont point détruites par l’affectation

the surest anchor of the state in every kind of political agitation.

There is nothing so difficult for a prince, despotically inclined, to render patient and submissive as an high spirited and independent nobility. In France the gradual extinc-

tion mentongère de confondre la corruption de quelques nobles, et la feodalité, avec l'institution politique de la Noblesse dans l'état. Tant qu'à Rome le sénat a joui de la considération et du pouvoir, qu'il a balancé la force toujours croissante du peuple, la république s'est élevée au plus haut degré de gloire et de puissance; elle n'a perdu sa liberté, elle n'est devenue le patrimoine des *Néron*, et des *Caligula*, que lorsque la Noblesse avilie, et le sénat sans force, n'ont pu empêcher le peuple de se vendre aux tyrans. Lorsque Cromwell, secondé du parti fanatique, voulut régner par la crainte, ce fut contre la chambre des pairs qu'il dirigea les fureurs des communes. Des qu'elle fut détruite, la liberté s'anéantit avec elle, et l'on vit bientôt un Roi foible et malheureux cimenter de son sang la servitude publique." *Merc. de France*, No. 32. *August 3d, 1791.* M. Mallet du Pan writes uniformly with the sentiments of an Englishman, acquainted with the true principles of politics; and has had the honour to be persecuted, on that account, as an *Aristocrat*, though a very zealous friend to liberty.

tion

tion of the independent nobles of the ancient state rendered the Sovereign despotic ; and in all the states of Europe the principles of liberty that still subsist, originated chiefly from the freedom and high spirit of the feudal barons. In England particularly, where we are indebted to the united efforts and strong courage of that very order for the great and fundamental CHARTER OF OUR LIBERTIES, for its frequent renewal, and final confirmation, it would be unpardonable in gratitude to decry nobility, which, even for that one act, deserves to be accounted sacred among us for ever.

The situation of a nobility, such as is here described, opposes itself with no less felicity against the undue influence of popular force. For which reason, and because the very existence of such a class is offensive to that unsocial and base pride, which, when it cannot honestly exalt itself, is desirous of obtaining gratification by the only method remaining,
that

that of degrading others ; a nobility is generally the first object of rage, whenever there is in the people a disposition to exert their dangerous strength ; that strength which for the benefit of society, and particularly of themselves, ought to remain in general inactive. In the earliest periods of the Roman republic we find, indeed, the patricians oppressing the plebeians, but not so much as nobles exerting their power against the commons, as in the character of rich men who oppressed their indigent creditors, which may happen where no order like nobility exists. In all the subsequent periods of that history, the tendency of popular pride to gain the elevation it denies to others, is perpetually illustrated ; and in time so far obtained its object, that the ambitious among the patricians were compelled to the expedient of being made plebeians. Then was the country ripe for the machinations of demagogues, and consequently for subsequent servitude. All which is no more than the natural operation of human

man

man pride, ambition, and other vices, not retrained by the due balance of political authority. In our own country, the destruction of the nobility was sought with eagerness by those chiefs of the republicans, who wished to exercise a heavy tyranny themselves; and when the necessity for a free and equal government was felt and understood, the nobility was fully re-established, without a murmur,

Care must of course be taken, for the sake of public liberty, that the privileges conceded to this order, be not of such a nature that they can produce oppression. No exemptions from the sanctions of the penal law, no exemptions from taxes or other public burthens; * no right of exacting services. Their distinctions must be only such as give a dignity and splendor, without oppressing any

* Such exemptions formed the real grievances felt in France from their *noblesse*, which differed in almost every point from our nobility.

man : titular, and armorial honours, precedence, the appointment to certain royal orders, and the like ; things which, though it is most natural for those to seek very earnestly, who have a reasonable prospect of success, disturb no man's repose that has them not, while moving in another sphere, nor raise even transient envy in the bosoms of the wife.

The independence and liberality of an assembly formed from such a class, will, in general, free its deliberations from the fetters of all mean and partial interests : and, by the same qualities it will best be fitted for a court of ultimate appeal, especially if there be of necessity admitted to it some of those men whose lives have been employed in studying and deciding on their country's laws. Such a court will be, in this respect as well as others, above improper influence, and having the assistance of knowledge, may be expected to decide impartially and justly.

C H A P. XII.

Farther Considerations on an Order of Nobility

IT is a vain attempt to square the passions of mankind to suit the theories of abstract reasoners : a wise man forms his system rather on experiments, and works on human nature as he finds it.

The most important secret is, to render even the failings and faults of men, if possible, subservient to the public welfare. The love of honour, and political distinctions, is among our strongest passions. To gratify it, men will make such efforts as few other worldly motives will produce ; to aggrandize their families they will die ; and these feelings, though not entirely pure, are often found inseparable from minds of the most noble texture, and capable of the most excellent

cellent exertions. Besides this, to preserve for any time a system of political equality, is of all attempts most vain and fruitless. Nobility denied in one form will rise up in another: nor can it be foreseen upon how many different pleas it will be claimed, and, in a little time, acknowledged. In Rome, when the original strictness of distinction between the orders was destroyed, those men assumed nobility, and with all the pageantry and pride of any times asserted it, whose ancestors had gone through certain public offices. So that latterly man might be a plebeian, and yet not only noble, but proud and insolent from his nobility. The images of their ancestors preferred to curule honours, were their armorial bearings; were set up in their houses and carried at their funerals, with a pomp exceeding that of modern heraldry. Yet this was a republic, without a titled nobility, in which the *new man Cicero* had a thousand insults to encounter, before even his uncommon merit could procure him due re-

spect.* So inveterate are these propensities, and so impossible is it for any system wholly to prevent their operation. A forest might be kept upon a level, but it could only be effected by a labour which nature would be ever active to defeat ; by cutting to a certain mark the best and finest trees, the shrubs could never be trained up to any height or magnitude.

There are many public services which honours only can repay, and those not merely personal, but of greater value and duration. To hold in high respect the families of men, whose actions have been great or wisdom eminent, is natural and just. It shows the

* To shew that the existence of a titled nobility is not so hostile to merit as the common prejudices of mankind ; in England, where there is such a nobility, the son of a cobbler or a scavenger might become the first man in the nation, next to the sovereign, with much less difficulty than Cicero encountered to obtain his dignities in Rome. Through the channel of the law he might become lord chancellor, and then prime minister. Other means of rise might also be pointed out.

sanctity

sanctity of virtue by which a whole descent can be illustrated, and gives, as far as mortal power can give, a kind of immortality of honour. When the career of life is nearly closed, of what avail are personal distinctions to a wise or thinking man? but to exalt his family he will pursue his toils to the very verge of life. It is wise to have incitements of this kind for those who may despise all meaner motives, and to keep them in gradation, so that very few indeed may stand above the hope of gaining something more. This is to take fair advantage of the strongest human propensities, and to use them as the means of causing good and great exertions.

Honours gained by public service are paid to those who first achieve them as a general debt; they are continued to their families, because it is most evident that otherwise, in comparison with the benefits conferred, they are futile and inadequate rewards; to violate
 them,

them, at any period, is national dishonesty, amounting to less than a direct confession of being too base to merit any noble service, and much too false to answer any confidence.*

From a class of men accustomed to look chiefly to high objects, hereditary counsellors of state, and legislators, commanding the best means of general information and improvement, a nation cannot fail to gain accession of some great and noble sentiments, which will on due occasions show themselves in its defence and service : and if, as in the execution of all human plans there will arise defects, the origin of honours should not always be in practice that which sages might point out, the uses of the class which

* Is there any Englishman so void of feeling as not to glory in the elevation which some great English families enjoy from the achievements of their ancestors ? To bestow them was originally a duty, to esteem them sacred is the only proof that can be still preserved of public gratitude.

bears

bears them will yet remain the same ; its independence will resist ambitious projects from the throne, and its collected firmness check the turbulence of demagogues.

The picture of a well-constructed society cannot be perceived in a monstrous and forced equality of ranks, but in such a regular gradation of them, as may give to those whose task it is to aid or to participate the government, dignity, and noble elevation ; to the greater numbers, who to be happy must be governed, protection and security, without the slightest danger of oppression. Thus, in a garden well arranged, the high and spreading trees will neither be cut down nor violated, but placed in such a manner that, while they neither intercept the sun, nor draw the juices of the soil from the humbler plants, they may effectually ward off from all the fury of the north, and blighting sharpness of the east.

C H A P. XIII.

On a Religious Establishment.

THOUGH it be a most false, and the refuge of a desperate perverseness, to assert that religion was at first invented by the magistrate or lawgiver, the better to effect his purposes; yet certain it is, that to Law and public order, there can be no aid so perfect or so powerful as religious principle. That which pervades the heart, and regulates the secret springs of actions, is able to prevent such crimes, and disposition towards offence, as human Law can never take within its cognizance; and by referring to a judge of infinite intelligence, excludes all hope of passing undetected.*

An

* See Warburton on the alliance of church and state. b. i. c. 3. where the subject is more fully treated, and
more

An aid so powerful should, most assuredly, be sought by every wise and prudent lawgiver ; and a good man, in those circumstances, must naturally wish to make that doctrine prevalent which he himself believes to be divine.

Now it seems impossible that without the aid of an establishment, the culture of Religion can be properly encouraged, or its permanence secured : for, though to entertain some notions of Religion be so natural to man that he is hardly ever found divested of them totally, yet, to think correctly on a subject so abstruse, or to act consistently with such good principles as he admits, things so little suited to his feeble reason and strong passions, that we find him always liable to

more ably : the whole chapter well deserves a careful and considerate perusal. I would, however, have it understood, that in commending certain parts of that very able work, I by no means undertake to be a blind defender of the whole.

the greatest corruptions in opinion, and the most extreme licentiousness in conduct.

As an anchor to prevent, in some degree, uncertain fluctuations, an establishment is highly useful. It is a public testimony of preference to the persuasion so maintained, by which it is enabled to command attention and respect. It enforces duties which might otherwise seem merely speculative; and gives, in due return for the support that Law derives from the internal principle, the strength of Law to regulate the outward practice.

The Religion to be established in any country must be, for many reasons, that which the people, or an evident majority among them, may approve. In the first place, from a kind of necessity; for the people, having indefeasibly the main strength of the state residing in them, cannot, if it should become a contest, be compelled to pay obedience, where they do not give assent: or if, in
matters

matters of less consequence, they might, yet in that which they so strongly feel as their Religion, they will not be so tractable. In the second place, from evident expedience; for as the end of an establishment, in common with all other plans of legislative wisdom, *is public benefit*, the greater number it embraces, the more widely are its benefits diffused.

With respect to the internal form of an establishment, should any be prescribed by the Religion thus admitted, that of course must be preferred. If it be left to men, as in the Christian revelation we have cause to think it is, to form the government of church, as well as state, according to their views of general utility, then it must become a work of human wisdom like the former.*

Without

* The regulations introduced by the Apostles in their churches, are not in Scripture recommended to us as our models. It appears, indeed, most wise to imitate,

Without attempting a detail, which here would be misplaced, thus much at least is evident, that of things designed for similar ends, the regulation should also be, in wisdom, similar; consequently, as political establishment, constructed upon the knowledge of human nature, calls for a gradation of orders, with provision for the ablest minds to govern, and the inferior to obey, with prospects to excite a laudable ambition for the public service; so also in the church establishment there must be, for the same reasons, the like subordination, and the same incitements.

The ecclesiastical establishment, as well as every other in the state, must be made subject to the Sovereign; and it will be right

as far as we can trace them, and the change of public manners will admit, whatever institutions were devised by men so wise, and so peculiarly assisted; and this the Church of England has endeavoured: but the discretionary use of human wisdom seems to be allowed most fully.

that

that in this also, as in the others, he should be regarded as the primary source of honour.*

As property is, by the natural principles of liberty, inviolable, and Government itself is instituted principally for its defence ; it is just and necessary, that ecclesiastical property, in whatever form conferred, should be held at least as sacred as all other. By ecclesiastical property, of course, is meant that provision and subsistence which men legally acquire by exercising religious functions, or by holding any certain rank within the church establishment. Between which, and all other property, it seems that no distinction can be justly made ; or if any, such only as must be entirely in its favour.

* The popular election of bishops, &c. has something specious in it, and might answer well when all men had some purity of zeal, but in times of much corruption, we well know that the intriguing and impudent would always gain the advantage against modest piety, learning, and true merit.

From

From the office which the ministers of Religion hold, as employed in public worship, and in the general instruction of the people, it is necessary that the whole establishment should be maintained by Law, on such a footing, that neither dependence may render them timid, nor indigence contemptible. The illiberal of all classes, if they could command their teacher, would insult him; and the vain, if his appearance were not decent, would despise him. We must proceed in this case, as in others, not upon the supposition of the virtues which men ought to have, but so as to obviate the danger of those vices which we know are always prevalent.

To all persuasions in Religion, besides that legally established, should be given an entire toleration; with this exception only, that whenever there appears in any sect a hostile and an active spirit, eager to subvert and to supplant the church, to which the Law has
given

given establishment, such restrictions must be made as legislative wisdom shall esteem sufficient to defeat those machinations; that the country be not torn by contests the most violent and dangerous, nor the majority of people interrupted in the worship they prefer, nor deprived of those advantages, for the sake of which the establishment was at the first deemed necessary. To form an institution, and then refuse protection to it, would be the height of folly. So long as any dangers can be justly apprehended, to endeavour to remove such Laws as form a barrier to the church established, would be to try to make the legislature counteract itself: to persuade an honest man to give away his own security, and yield, through mere well-meaning, his only weapons of defence, to those who have declared themselves his enemies. While religious opinions continue matter of speculation, or of private observance only, they fall not within the jurisdiction of the legislator; but when they

they are productive of designs and actions destructive of that order, which the wisdom and goodness of the nation has appointed, they then require restraint and counteraction.

CHAP.

C H A P. XIV.

On the Right of Resistance.

AS in this small tract some points have been denied, which the extravagant asserters of freedom misunderstood have considered as axioms; and some truths asserted, concerning the necessity of order and obedience, which are hostile to many notions injudiciously connected with the cause of natural rights; and as in maintaining some parts of my opinion I have called in aid some texts of Scripture, which have been pressed sometimes, however unfairly, into the service of the papal doctrines of non-resistance and the like; it will not, perhaps, be expected by some readers, that with the same zeal that I have shown in the defence of Kings and Nobles,

T

I should

I should maintain also the right of general Resistance to oppressive Government.

To this, however, the political opinions herein stated, do, if rightly understood, directly lead. With the spirit of an Englishman have I read, argued, and written; with the spirit of a man, who, feeling that by the constitution of his country are secured to him and all his fellow subjects every real right of man, and thankful to heaven for all the comfort that security conveys, must regard, not as crimes, but as proofs of wisdom and of virtue, those great efforts of resistance, by which it was at first obtained and afterwards perpetuated. Had the resistance of the Commons in the reign of Charles the First been confined to the rejection of all arbitrary impositions, and the prevention of all arbitrary judgements and oppressive measures; every step, in such a cause, prescribed by strict necessity, would have been within the boundaries of right: but when they thence proceeded
to

to degrade the nobles, persecute the church, and with a mockery of justice try and murder him to whom, in all just points, they owed obedience, then their guilt effaced their former merits, or rather brought to light their dark hypocrisy. For this, when they had filled their measure of iniquity, they were punished ; first by a strong tyranny they raised themselves, and then, by being consigned to infamy, and the public execration of posterity.

Of the Revolution in 1688 we now all think alike, or nearly so : we regard it as the glory of our nation ; as a memorable and most illustrious proof of public virtue, firmness, moderation, and true wisdom. Those only are dissentient who hold, as very few at present do, the old doctrine of right indefeasible ; and those who, on the contrary, think that effort was imperfect, because it did not reproduce the horrors of the former æra ; or who think, as some at present seem to do, that as a Revolution, it was indeed a good

thing, but should be preparatory only to another, which in its turn must lead to other Revolutions in everlasting succession ; imagining of Government, as the old fanatics did of religion, that it was

——intended,
For nothing else but to be mended ;

And that the thing to be desired in politics is the want of permanence in all institutions, and the frequent introduction of confusion.

Having premised thus much as explanatory of my particular notions as an Englishman, I shall proceed, as in the former instances, to consider the political doctrine I advance on the general principles of wisdom and of right.

THE Right of making Resistance to oppressive Government is founded upon that which nature has most strongly intimated, and no respectable authority has ever called in question, the *right of self-preservation*; which, though conveniently asserted in this single phrase, is in truth no other than the right above laid down as natural, the universal right to life and all its innocent advantages, derived expressly from the gift of the beneficent Creator.

When from the imperfection or the inequality of law, or the iniquity of some prevailing custom, the value of that general gift is grievously diminished, by the insecurity of life, of liberty, or property, it then is wise and just to introduce such reformation as the case requires. Whatever has been instituted the collected strength of many may annul: the right to exercise this power depends upon
the

the justice of the cause. Whoever finds himself aggrieved, and liable by the established state of things to be so, in those great points wherein the social liberty of man consists, in those essential rights to which he is attached by the most natural of all feelings, the desire of self-preservation, is authorised to join with others, and to make resistance. Laws are not sacred in themselves which defeat, instead of being friendly to, the end of all good Government, the general welfare; and resistance may be carried on by all expedient means, till permanent redress and due security shall be obtained. The precepts recommending honour and obedience to all human institutions in behalf of Government, are applicable only to the general state of things, when all proceeds by rules admitted, and in the even tenor of a fixed establishment; not to those few periods of ebullition, and general exertion, when by a strong necessity men are compelled to change their form of Government, or new-model some
 impor-

important parts, or else relinquish their true rights as men. By the commands of Scripture and morality enforcing order, individuals are in general most strictly bound ; nor does the exception take its rise until the cause become a common one ; until the justice of the plea be evident, and the necessity for the effort pressing.

In wisdom, however, it must be remembered that a total Revolution, changing every thing, and annulling all existing authority, is a very desperate measure. It introduces anarchy, the worst and most pernicious state of man collected in society. Nor can it often be required : bad Governments have parts, in general, that are good : these experience has approved and made familiar, and to change them is to choose a hazardous experiment in preference to certain knowledge. Need we add that such a preference is folly, if not wickedness ?

This also, for the sake of justice, must be laid down as a maxim to be kept in mind in every Revolution or new-modelling of Government, partial or entire, if in times so circumstanced the rules of justice or the voice of reason can be heard; *that* property or subsistence legally acquired, under any previous forms of policy, however faulty, must be held sacred in the persons of the individuals so possessing or enjoying them. For as the heaviest of punishments, hardly excepting death itself, is degradation, or the reduction of man from affluence to a state of indigence, either absolute or even comparative, to inflict this punishment on those who have been guilty of no crime, must be a cruel and a violent injustice. Whatever there might be improper in the prior laws, they were, while they existed, the bond of the community, and to live according to them was not only innocent, but necessary. Under the faith of the subsisting Government, and consequently of the whole nation, while the nation acquiesced,

quiesced, men exercised their powers and talents to obtain support ; and consequently, by the faith of the whole nation, if there be any, they ought to be protected to the end of life in those their lawful acquisitions. If savings are decreed in certain branches, the nation in the end will be the gainer, but cannot justly make its profit by the ruin or distress of those who there have vested all their hopes of maintenance, who sought their situations with the sanction of the laws, and paid the legal price to gain them. The lapse of a few years will, in the course of nature, clear away the present holders of such posts as may seem burthensome, and then suppression or reduction may be made without injustice, and the immortal public will enjoy the benefit.

If for the neglect of this just maxim be alledged the pressure of a public necessity, even this plea, specious as it may appear, must be injurious and false. If there be indeed a public necessity, the public should combine, gene-

U

rally

rally and individually, in fair proportions, to remove it : but to plunder any single class of the community, merely to relieve the rest, who have no better claim than they to favour and protection, may be the law of the strong, but never can be of the just ; it is indeed the utmost stretch of public profligacy.

With respect to honours, the same rule should be observed ; for if the worth of property be rated by the natural feelings of mankind concerning it, then must honours be among the most inviolable kinds of property, and that which would be last relinquished : mere honours oppress no one ; but the loss of honours, lawfully obtained, without a crime, is a very grievous oppression.

Very different is the case of privileges which are, in their nature or effects, oppressive. It is not just that any men should, for an hour, endure oppression, for the sake of those who, by a claim once legal, had gained
a power

a power to exercise it. The privilege was from the first offensive to natural right and justice, and the desire to use it, so vicious, base, and cruel, that it can deserve no tenderness or management. It may be at any time destroyed, and by any mode of abrogation, so that it be attended with no penal judgement, but that loss, against the men, who, when they used it, had the sanction of the law,

Such have been my private thoughts upon the general principles of Government, and the most striking features of political science; which I have no farther laboured to accommodate to the Constitution of *Great Britain*, or to aim against the present errors of *France*, than as the one appeared to me consistent with the soundest wisdom, and the other pregnant with confusion and destruction both in their origin and example.

The general maxim on which the whole discussion has been founded, and which, for distinctness sake, I here repeat, is this :
THAT THE SOURCES OF ALL GOOD GOVERNMENT, AND ESSENTIALLY OF ALL RIGHT TO GOVERN, ARE WISDOM AND GOODNESS.

My deductions from this principle, and reflections on the subjects naturally arising thence, I have now made public ; because I feel a hope that they may be of service to my country ; and because I know, undoubtedly, that whomsoever they shall persuade to think as I do on the whole, or concerning the main parts of these great topics, they will make a zealous friend to public order, public virtue, and public liberty.

APPEN-

A P P E N D I X,

*A Review of the French Declaration of the
Rights of Men and Citizens on the Prin-
ciples of this Treatise.**

DECLARATION.

REMARKS.

I.

MEN are born and al-
ways continue free and
equal as to their rights.
Social distinctions can be
founded only upon gene-
ral utility.

The

I.

THERE is nothing in
this article that is objec-
tionable, or not recognized
fully by the Constitution
of Great Britain.

This

* The preamble is omitted, as containing nothing that re-
quires to be controverted, except the general notion that the
good proposed can be effected by the declaration subjoined, the
falseness of which will be evident from the remarks annexed.

DECLARATION.

REMARKS.

II.

The end of every political association is the preservation of the natural and imprescriptible rights of man. These rights are, *liberty, property, security, and assistance of oppression.*

II.

This also is acknowledged ; and is asserted fully in this treatise, at p. 21.

III.

The nation is essentially the source of all sovereignty. No body of men, nor any individual, can exercise any authority which is not derived from it.

III.

The nation has, indeed, essentially the power by which all Government must be supported. But Government is its most essential want ; could a nation govern itself, there would be no occasion to

appoint a Government. The principle is also practically dangerous : who will obey, when he is told, that it is his right to govern ? They who can controul their governors are not governed. That all authority is, in fact, derived from the collective strength of the many, is a truth ; but is a truth from which no obligation to obey the many can be properly deduced. The many must obey, for their own sakes, because they know not how

REMARKS.

to govern. If they command, it is because they can, not because they ought: because they are strong and wilful, not because they are either wise or virtuous. If a majority, however great, assume, by force, the right of governing, because they have the power, they injure the minority; for every man has a natural right to be governed by reason and justice, not by brute force.

DECLARATION.

REMARKS.

IV.

IV.

Liberty consists in the power of doing whatever does not injure another. Thus the exercise of the natural rights of every man, has no other limits than those which ensure to every other member of the same society the enjoyment of the same rights. These limits can be determined only by the law.

This is true, and seems to need no particular remark.

V.

V.

The law has no right to forbid any actions except those

This too is very well, if it be remembered that the law

DECLARATION.

REMARKS.

those which may be hurtful to society. What is not forbidden by the law should not be hindered, nor can any man be forced to do what the law does not require.

law alone is to determine what is hurtful.

VI.

VI.

The law is the expression of the general will.* All citizens have a right to concur personally, or by their representatives, in its formation. It should be the same for all, whether it protects or punishes. All citizens, being equal in its sight, are equally admissible to all digni-

The law is the expression of the wisdom and the justice of the men who formed it, and is, if they were well selected, the best wisdom of the nation: to this the various wills of the community should properly be subjected. There is no such thing as a general will in large

* These are the words of Rousseau. But Rousseau says also, that this will is intransmissible, that it cannot be represented or supplied, and results from the immediate will of every citizen. *M. Malouet*, remarking on this subject in the National Assembly, said very properly, "Rousseau would have defined law better if he had called it the expression of the public justice and wisdom: for the general will may be unjust, and tinctured with bad passions, which the law should never be." — *Mercur de France*, Aug. 30, 1791, p. 210.

DECLARATION.

REMARKS.

dignities, places, and public employments, according to their qualifications, and without any distinction, except that created by their virtue or their talents.

large societies, for there never can be unanimity; and the will of a majority may be unjust when that of a minority is just. If citizens had all a personal right to concur in forming laws, the sending representatives would not be an

equivalent. But the forming of laws is matter of prudence, not of right; and representatives are chosen to secure the people from oppression, not to utter their intentions, or to take up their opinions right or wrong. That laws should be equal is true. As to the eligibility of men to places, as places do not rank among the rights of men, the caution seems unnecessary. Much, however, will depend upon the latitude of the interpretation. If it be meant that a priest may be created a judge, or a lawyer a bishop, upon proof or supposition of their being qualified, the measure would produce some discontent, and on the whole, perhaps, more harm than good. If it be intended only to prevent exclusive claims of classes more arbitrary, such as nobles or plebeians, to certain employments, the provision is just enough; but should be made in another way, by the denial of exclusive arbitrary privileges.

DECLARATION.

REMARKS.

VII.

No man can be accused, arrested, or held in confinement, except in cases determined by the law, and according to the forms thereby prescribed. They who solicit, promote, execute, or cause to be executed, any arbitrary orders, ought to be punished: but every citizen, cited or apprehended by virtue of the law, ought to obey instantly, and by resistance becomes culpable.

VII.

Very right; and perfectly established here in England: except that there is a latitude in the terms of the declaration in this place, which might admit of much ridiculous interpretation.

VIII.

The law should not establish any punishments but such as are strictly and evidently necessary: and no man should be punished but by virtue of a law established and promulgated
be-

VIII.

Right: except that it is hardly possible for human wisdom to determine, what punishments are strictly and evidently necessary in some cases. The latter clause is perfectly right.
Right.

DECLARATION.

REMARKS.

before the offence, and legally applied.

IX.

As every man is presumed innocent till his guilt is [legally*] declared, whenever the detention of any one is judged indispensable, all rigour, beyond what is necessary to secure his person, should be severely prohibited by law.

IX.

Right.

X.

No man should be molested on account of his opinions, not even his religious opinions, provided his avowal of them does not interrupt the public order which by law has been established.

X.

Very just ; and perfectly consistent with the principles laid down above, in Chapter the Thirteenth.

* *Legally* should have been added, it is clearly meant to be implied.

DECLARATION.

REMARKS.

XI.

The free communication of thoughts and opinions is one of the most precious rights of man: every man may, therefore, speak, write, or print freely, except that he must answer for the abuse of this liberty in cases determined by the law.

XI.

This being only the fourth article applied to a particular case, is nugatory and superfluous. It means only that a man may do in this respect, as well as others, whatever the law does not forbid; as to the free communication of thoughts being one of the most precious rights of man, it is true enough; it is a part of personal liberty, and conduces both to the comfort and to the improvement of life.

XII.

A public force being of necessity required to guarantee the rights of men and citizens, that force is instituted for the benefit of all, and not for the private
ad-

XII.

This no Englishman will deny.

very

DECLARATION	REMARKS.
advantage of those to whom it is entrusted.	

XIII.

XIII.

For the support of the public force, and for the expences of Government, a public contribution is of indispensable necessity. This, therefore, should be equally divided among all the citizens according to their property.

Very true: adding only, if possible.

XIV.

XIV.

Every citizen has a right, by himself or his representative, to determine the necessity of public contribution, to give a free consent to it, to examine the employment of it, and to regulate the amount, assessment, enforcement, and duration.

They who give their money have certainly a right to be well satisfied, that it is legally demanded, and justly used; but as most of these points are totally beyond the knowledge of the generality, and as the people always will incline against

DECLARATION.

REMARKS.

against an impost, the general management of all these points must be entrusted to the Government, or rather to the legislature, under due restrictions,

XV.

The society has a right to demand of every public agent an account of his administration.

XV.

Every public agent who betrays his trust should be punished by the law. The sovereign, however, is not properly a public agent, nor can consistently be made responsible. See p. 85.

XVI.

Every society in which there is no full security of rights established, nor separation of powers determined, is without a constitution.

XVI.

It should rather be said, that every such society has a bad constitution; though what is said about the separation of powers is not very intelligible.

The

The

DECLARATION.

REMARKS.

XVII.

The right to property being inviolable and sacred, no one ought to be deprived of it, except in cases when public necessity, legally ascertained, may evidently demand it, and on condition of a just and previous indemnity.

XVII.

The plea of public necessity was evidently intended to cover the bold rapines of the National Assembly.* But public necessity can attack no particular property in preference to others; as the law is equal to all, so also the necessity which supercedes the law must press on all alike, and confiscate all property or none. What indemnity have the French clergy received?

* So spake the fiend, and with necessity
The tyrant's plea, excus'd his devilish deeds.

Parad. Lost. iv. 393.

† This is acknowledged by Mr. Mackintosh, (p. 72.) who seeks no defence for his French allies, but in his strange argument, that church property is not property.

Such is the celebrated declaration of rights which asserts no claim that is not granted freely to all Englishmen, except such as are founded on false principles.

THE END

